

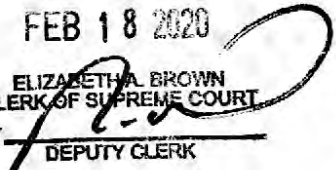
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE MIGUEL GUTIERREZ,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN;
ATTORNEY GENERAL; AND THE
STATE OF NEVADA,
Respondents.

No. 78205-COA

FILED

FEB 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Miguel Gutierrez appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Gutierrez filed his petition on November 4, 2015, more than eight years after entry of the judgment of conviction on February 20, 2007.¹ Thus, Gutierrez' petition was untimely filed. *See* NRS 34.726(1). Moreover, Gutierrez' petition was successive because he had previously filed two postconviction petitions for a writ of habeas corpus.² *See* NRS 34.810(2). Gutierrez' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). "We give deference to the district court's factual findings regarding good cause, but we will review the court's application of the law to those facts de novo." *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

¹Gutierrez did not pursue a direct appeal.

²*Gutierrez v. Warden*, Docket No. 58492 (Order of Affirmance, October 5, 2011); *Gutierrez v. State*, Docket No. 52161 (Order of Affirmance, December 23, 2009).

In his petition, Gutierrez argued he had good cause because the State failed to disclose allegedly exculpatory evidence concerning the confidential informant. However, the district court found Gutierrez raised claims in his first petition concerning the disclosure of evidence related to the confidential informant that are “virtually identical to those now presented in his 3rd petition.” The district court further found that the name of the confidential informant was listed in the information filed in 2006 and “any issue involving the confidential informant could have or should have been” raised within one year of entry of Gutierrez’ judgment of conviction. The record supports the district court’s findings.

Because Gutierrez’ claim was reasonably available to be raised in a timely-filed petition, he failed to demonstrate good cause to overcome the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003); *see also State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (explaining that when a petitioner raises a claim alleging withheld exculpatory evidence in a procedurally barred postconviction petition for a writ of habeas corpus, “the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and prejudice to overcome the procedural bars”). Therefore, the district court did not err by dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Gibbons

, C.J.



Tao

, J.



Bulla

, J.

cc: Hon. Kimberly A. Wanker, District Judge
Jeremy C. Baron
Rene L. Valladares
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk