

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS ROY GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78357-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dennis Roy Garcia appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Garcia filed his petition on December 10, 2018, more than three years after entry of the judgment of conviction on June 11, 2015.¹ Thus, Garcia's petition was untimely filed. See NRS 34.726(1). Moreover, Garcia's petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(2). Garcia's petition was

¹Garcia did not pursue a direct appeal. Garcia's petition was also untimely from the entry of the amended judgment of conviction on June 25, 2015, and of the second amended judgment of conviction on January 5, 2016, both of which merely amended Garcia's presentence credit.

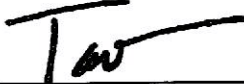
²*Garcia v. State*, Docket No. 74783-COA (Order of Affirmance, October 25, 2018); *Garcia v. State*, Docket No. 70041-COA (Order of Affirmance, September 20, 2016). Garcia filed a first, timely postconviction petition for a writ of habeas corpus on November 16, 2015. The district court afforded him relief.

procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Garcia contended he had good cause to overcome the procedural bars because a judgment of conviction in an unrelated case was amended to remove the special sentence of lifetime supervision. Garcia asserted this should permit him to argue that a search of his residence that led to the charges at issue in this case was improper as it was performed because he was under lifetime supervision. However, Garcia discussed the search of his residence and whether he should have been on lifetime supervision in a previous petition. Therefore, Garcia's claim concerning the search of his residence was reasonably available to be raised at an earlier time and Garcia failed to demonstrate an impediment external to the defense prevented him from doing so. *See State v. Williams*, 120 Nev. 473, 476-77, 93 P.3d 1258, 1260 (2004). Accordingly, the district court properly dismissed the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Dennis Roy Garcia
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk