

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD A. REECE,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 79616-COA

FILED

APR 17 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Donald A. Reece appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Reece argues the district court erred by denying his June 6, 2019, petition as procedurally barred. Reece's petition was untimely because it was filed more than 29 years after issuance of the remittitur on direct appeal on January 9, 1990, *Reece v. State*, Docket No. 20056 (Order Dismissing Appeal, December 20, 1989), and more than 26 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Moreover, Reece's petition was successive because he had previously filed a postconviction petition 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 petition.¹ *See* NRS

¹*Reece v. State*, Docket No. 23850 (Order Dismissing Appeal, July 7, 1994).

34.810(1)(b)(2); NRS 34.810(2). Reece's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Reece was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

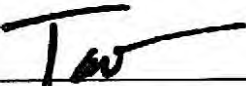
First, Reece claimed the procedural bars should not apply because his underlying claim concerning his sentence for the deadly weapon enhancement was new and had not been previously considered. However, Reece did not demonstrate that an impediment external to the defense prevented him from raising his underlying claim in a timely manner. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, we conclude the district court did not err by denying this good-cause claim.

Second, Reece claimed the procedural bars should not apply because he had new evidence to support a previously raised claim concerning a medical condition that he asserted caused him to accidentally shoot the victim. Reece raised the underlying claim in his prior petition and the Nevada Supreme Court concluded Reece's counsel "properly elected not to present any evidence of appellant's medical condition" during trial. *Reece v. State*, Docket No. 23850 (Order Dismissing Appeal, July 7, 1994). As Reece already raised the underlying claim and it was rejected by the Nevada Supreme Court, the doctrine of the law of the case prevents further consideration of this claim, see *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), and Reece did not provide a compelling reason to revisit the Nevada Supreme Court's decision, see *Tien Fu Hsu v. City of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007).

Moreover, Reece did not overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Donald A. Reece
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk