

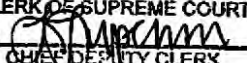
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON EVAN BROWNE, A/K/A JASON  
EVAN BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78410-COA

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jason Evan Browne appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 20, 2017, and various supplemental pleadings. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Browne's conviction and sentence were affirmed on direct appeal in *Browne v. State*, 113 Nev. 305, 933 P.2d 187 (1997). His death sentence was overturned in postconviction habeas proceedings, *see State v. Browne*, Docket No. 33769 (Order Dismissing Appeal and Cross-Appeal, April 27, 2000), he was resentenced to life without the possibility of parole, and his new sentence was affirmed in a subsequent direct appeal, *see Browne v. State*, Docket No. 44008 (October 18, 2005).

Browne filed his petition nearly 20 years after the remittitur was issued on July 2, 1997, in his first direct appeal, and more than eleven years after the remittitur was issued on November 15, 2005, in his second direct appeal. Browne's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive insofar as he reraised claims from his previous petitions and an abuse of the writ insofar as he raised

new claims.<sup>1</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Browne's petition was therefore 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).

Browne contends the district court erred by denying his petition as procedurally barred. Browne put forth two claims to excuse his procedural bars. First, he claimed he was challenging the jurisdiction of the sentencing court, and jurisdiction could be challenged at any time. Second, he claimed he had good cause because he suffered from a mental defect and lacked knowledge about the law and complexities of his case.

Neither excuse provided good cause. Browne's substantive claims challenged the validity of his sentence, but they did not implicate the jurisdiction of the courts. See Nev. Const. art. 6, § 6; NRS 171.010. And Browne's argument regarding his mental defect and lack of knowledge did not "show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (providing organic brain damage, borderline mental retardation, illiteracy, or lack of inmate law clerk did not excuse procedural bars), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

Moreover, Browne could not demonstrate he was prejudiced. Browne's substantive claims were based on his assertion that NRS 213.085(1) was being applied to him retroactively to prevent his seeking a

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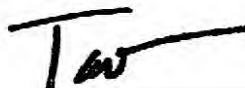
<sup>1</sup>See *Browne v. State*, Docket No. 47992 (Order of Affirmance, May 24, 2007); *State v. Browne*, Docket No. 33769 (Order Dismissing Appeal and Cross-Appeal, April 27, 2000).

commutation of his sentence to life with the possibility of parole. However, Browne agreed not to seek commutation of a sentence of life without the possibility of parole to a sentence of life with the possibility of parole in exchange for the State agreeing not to seek the death penalty against him. Thus, Browne's assertion that he was sentenced pursuant to NRS 213.085 is belied by the record, and he failed to overcome his procedural bars. *Cf. Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (explaining a district court need not conduct an evidentiary hearing where an argument to overcome a procedural bar is belied by the record).

To the extent Browne contends the district court abused its discretion by not appointing postconviction counsel, Browne is not entitled to relief. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. The district court denied Browne's request because the court was summarily dismissing his petition. We conclude the district court did not abuse its discretion by denying Browne's request for counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

<sup>2</sup>To the extent Browne raised new arguments related to good cause for the first time on appeal, we decline to address these arguments. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. Joseph Hardy, Jr., District Judge  
Jason Evan Browne  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk