


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS ANTHONY NAVARRETTE,
Appellant,
vs.
BRIAN E. WILLIAMS, SR., WARDEN,
Respondent.

No. 79147-COA

FILED

APR 27 2020

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

ORDER OF AFFIRMANCE

Nicholas Anthony Navarrette appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Navarrette filed a postconviction motion to withdraw guilty plea on January 31, 2017. The district court construed the motion as a postconviction petition for a writ of habeas corpus and denied it as procedurally barred without allowing Navarrette an opportunity to correct the defects in his pleading. The Nevada Supreme Court determined it was error for the district court to deny the motion as procedurally barred without first allowing Navarrette to correct the defects. *See Navarrette v. State*, Docket No. 72926 (Order of Reversal and Remand, May 15, 2018). On October 25, 2018, Navarrette filed a postconviction petition for a writ of habeas corpus. The district court treated that petition as relating back to the postconviction motion to withdraw guilty plea and denied the petition as procedurally barred as it was untimely, successive, and abusive.

Navarrette filed his petition more than one year after issuance of the remittitur on direct appeal on May 12, 2015. *See Navarrette v. State*, Docket No. 64033-COA (Order of Affirmance, April 15, 2015). Thus, Navarrette's petition was untimely filed. *See* NRS 34.726(1). Moreover, Navarrette'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 34.810(2). Navarrette's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

First, Navarrette argues the district court erred by denying his petition as procedurally barred because he demonstrated good cause and prejudice to overcome the procedural bars. "In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). An impediment external to the defense may be demonstrated by showing that the factual or legal basis for a claim was not reasonably available or that some interference by officials made compliance impracticable. *Id.* "[A] claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the

¹*See Navarrette v. State*, Docket No. 70171-COA (Order of Affirmance, February 23, 2017). Navarrette also filed a motion to withdraw guilty plea on August 5, 2014, which the district court construed as a postconviction petition for a writ of habeas corpus. Navarrette did not appeal from the denial of that motion.

delay.” *Id.* When reviewing a district court’s good cause determinations, we give deference to its factual findings but review its legal conclusions de novo. *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

In his petition, Navarrette claimed he had good cause because he lacked access to the prison law library. The district court found that the alleged lack of law library access did not prevent Navarrette from raising his claims in previous petitions and filings. Specifically, several of the claims Navarrette raised in the instant petition were raised in previous petitions or motions. Further, the district court found that the claims that were not previously raised could have been raised in his previous petitions and motions even without access to the law library. Therefore, the district court concluded that this claim did not demonstrate good cause. The record supports the decision of the district court, and we conclude the district court did not err by denying this good cause claim.

Next, Navarrette claimed he had good cause because he did not have access to his case file. Again the district court found that several of the claims raised in Navarrette’s petition were previously raised in other petitions and motions. And for the claims that were new, Navarrette failed to demonstrate how the lack of access to his case file prevented him from raising these claims in his previous postconviction petitions and motions. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (holding “[c]ounsel’s failure to send appellant his files did not prevent appellant from filing a timely petition, and thus did not constitute good cause for appellant’s procedural default”). Therefore, the district court concluded that this claim did not demonstrate good cause. The record supports the

decision of the district court, and we conclude the district court did not err by denying this good cause claim.

Navarrette also claimed he had good cause because he did not have help from someone trained in the law. The district court found that Navarrette had no right to the assistance of counsel when filing a postconviction petition for a writ of habeas corpus. *See* NRS 34.750(1); *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 871-72 (2014). Therefore, the district court concluded that this claim did not demonstrate good cause. *See Phelps v. Dir. Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). The record supports the decision of the district court, and we conclude the district court did not err by denying this good cause claim.

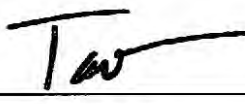
Second, Navarrette argues the district court erred by considering the State's untimely response to his petition. He claims the State's response should have been stricken and not considered. Even assuming the State's answer was late, the Nevada Supreme Court has rejected default as a remedy for a State filing an untimely response to a petition. *See Means v. State*, 120 Nev. 1001, 1019, 103 P.3d 25, 37 (2004). Further, the application of the procedural bars are mandatory. Therefore, even if the State's answer was stricken, the district court was still required to consider whether Navarrette's petition was procedurally barred. Accordingly, Navarrette failed to demonstrate the district court erred by considering the State's response and for denying the petition as procedurally barred.

Finally, Navarrette argues the district court should have held an evidentiary hearing on his ineffective assistance of counsel and illegal

sentence claims. However, because Navarrette failed to demonstrate good cause to overcome the procedural bars, the district court did not need to conduct an evidentiary hearing concerning his procedurally barred claims. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). Therefore, we conclude the district court did not err by failing to conduct an evidentiary hearing.

Having concluded Navarrette is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Nicholas Anthony Navarrette
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk