


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CESAR CONTRERAS-ARMAS,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 79811-COA

FILED

MAY 22 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cesar Contreras-Armas appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on June 10, 2019, and supplemental pleadings filed on July 15, 2019. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Contreras-Armas contends the district court erred by dismissing his petition as procedurally barred without first conducting an evidentiary hearing. Contreras-Armas filed a first, timely postconviction petition for a writ of habeas corpus on July 31, 2014. The district court decided the petition on the merits, granting Contreras-Armas' appeal deprivation claim and denying the remaining claims. Contreras-Armas did not appeal the denial of his postconviction claims. *See Contreras-Armas v. State*, Docket No. 73298 (Order of Affirmance, May 15, 2018 at 1 n.1) (finding no jurisdiction to consider Contreras-Armas' claims of error related to the denial of his postconviction petition because the clerk of the district court filed the notice of appeal and the clerk had no authority to file a notice of appeal from the denial of the postconviction habeas petition on behalf of Contreras-Armas).

Contreras-Armas' instant petition was successive insofar as he re-raised claims raised in his previous petition, and it was an abuse of the writ insofar as he raised new claims. *See* NRS 34.810(2). The petition was therefore procedurally barred absent a demonstration of good cause for failing to raise his claims in his prior petition or for re-raising the claims, and actual prejudice. *See* NRS 34.810(3).

"Generally, good cause means a substantial reason; one that affords a legal excuse." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation marks omitted). A petitioner must demonstrate "that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Id.* (internal quotation marks omitted). Contreras-Armas was not entitled to an evidentiary hearing unless he raised claims supported by specific factual allegations that are not belied by the record and that, if true, would have entitled him to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015).

Contreras-Armas claimed he had good cause to excuse the procedural bars because he needed to exhaust his state remedies in order to pursue federal habeas relief. Filing a procedurally barred petition for exhaustion purposes is not good cause because appellant's claims were reasonably available to be raised in a timely petition. *See Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *abrogated by statute on other grounds as recognized by State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012).

To the extent Contreras-Armas claimed previous postconviction counsel's ineffective assistance in failing to file an appeal constituted good cause, his argument lacked merit. Because Contreras-Armas, as a

noncapital habeas petitioner, was not entitled to the appointment of postconviction counsel. the ineffective assistance of counsel could not constitute good cause. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). For the foregoing reasons, we conclude the district court did not err by dismissing Contreras-Armas' petition without first conducting an evidentiary hearing.

Having found the petition was procedurally barred pursuant to NRS 34.810(2), the district court declined to appoint counsel. Because the petition was subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Egan K. Walker, District Judge  
Cesar Contreras-Armas  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk