

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY CRAIG ROSALES,
Appellant,
vs.
RENEE BAKER; AND THE ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,
Respondents.

No. 78735-COA

FILED

MAY 22 2020

ELIZABETH A. CROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Craig Rosales appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on September 12, 2018. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Rosales contends the district court erred by denying his petition as procedurally barred. Rosales filed his petition more than six years after issuance of the remittitur on direct appeal on March 23, 2012, *see Rosales v. State*, Docket No. 55948 (Order Affirming in Part and Reversing in Part, February 27, 2012), and the entry of the amended judgment of conviction on April 5, 2012.¹ Rosales' petition was therefore untimely filed. *See* NRS 34.726(1). The petition was also subject to summary dismissal because Rosales could have raised his claims in a prior proceeding. *See* NRS 34.810(1)(b)(2). Further, the petition was an abuse of the writ insofar as he

¹Rosales did not appeal from the amended judgment of conviction.

raised claims new and different from those in his prior petition.² See NRS 34.810(2). Rosales' 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).

Rosales claimed he had good cause to overcome the procedural bars because he did not have the "full" factual basis regarding the trial judge's alleged conflict of interest. A petitioner can overcome procedural bars by demonstrating "that the factual or legal basis for a claim was not reasonably available" to file in a timely proceeding. *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (quotation marks omitted). The district court found that Rosales admitted to being aware of the alleged conflict before he filed his direct appeal and well before he filed his first, timely postconviction petition for a writ of habeas corpus. This finding is supported by substantial evidence in the record.

Rosales also claimed the ineffective assistance of postconviction counsel in his prior proceeding constituted good cause. Rosales acknowledges that the Nevada Supreme Court has held that the ineffective assistance of postconviction counsel in a noncapital case may not constitute good cause to overcome procedural bars, see *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014), but he urges that *Brown* be overturned. This court cannot overrule Nevada Supreme Court precedent. See *People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (2007), as modified (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)).

²See *Rosales v. Warden*, Docket No. 66842 (Order of Affirmance, October 15, 2015).

For the foregoing reasons, we conclude the district court did not err by dismissing Rosales' petition as procedurally barred, and we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk