

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY EDWARD MCMAHON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79156-COA

FILED

JUN 12 2020

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

ORDER OF AFFIRMANCE

Johnny Edward McMahon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

McMahon filed his petition on March 1, 2019, more than nine years after issuance of the remittitur on direct appeal on December 22, 2009. *See McMahon v. State*, Docket No. 52071 (Order of Affirmance, October 16, 2009). Thus, McMahon's petition was untimely filed. *See* NRS 34.726(1). Moreover, McMahon's petition was successive because he had previously filed two postconviction petitions 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 petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). McMahon'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

¹*McMahon v. State*, Docket No. 65437 (Order of Affirmance and Dismissing Appeal in Part, September 16, 2014); *McMahon v. State*, Docket No. 60247 (Order of Affirmance, June 13, 2013).

pleaded laches, McMahon was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

McMahon contended the procedural bars did not apply because he challenged the district court's subject matter jurisdiction and asserted he may raise claims alleging fraud upon the court at any time. However, McMahon's claims did not implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010. Moreover, "[a]pplication of the statutory procedural default rules to postconviction habeas petitions is mandatory." See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Therefore, McMahon's claims alleging fraud upon the court were subject to the procedural bars and McMahon failed to demonstrate an impediment external to the defense prevented him from raising his claims in a timely-filed petition. In addition, McMahon did not overcome the presumption of prejudice to the State. Accordingly, we conclude the district court did not err by denying the petition as procedurally barred.


Next, McMahon contends the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Because McMahon did not demonstrate good cause, he fails to demonstrate the district court erred by declining to conduct an evidentiary hearing concerning his procedurally-

barred claims. Therefore, McMahon is not entitled to relief based upon this claim.

Finally, McMahon appears to argue the district court erred by adopting the State's proposed order denying his petition. McMahon does not identify any legal reason why the district court should not have adopted the proposed draft order. Moreover, McMahon does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. Therefore, McMahon fails to demonstrate he is entitled to relief based upon this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Johnny Edward McMahon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk