

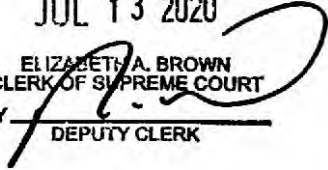
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD BANDA, A/K/A TONY
BANDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80329-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Banda appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed August 8, 2019. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Banda's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ because he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(2). Consequently, Banda's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(3).

Banda appears to have claimed that he had good cause to excuse the procedural bar because he was pursuing relief in the federal courts and needed to exhaust his state court remedies. However, a federal court's exhaustion requirements do not constitute an impediment external to the defense and therefore do not provide good cause to excuse a petition's procedural defects. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503,

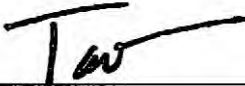
¹Banda did not pursue an appeal from the district court order denying his first postconviction habeas petition.

506 (2003); *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). Accordingly, we conclude the district court did not err by denying Banda's procedurally barred petition.

Banda requested the appointment of postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court found the petition was procedurally barred pursuant to NRS 34.810(2) and 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.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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