

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN EUGENE DOANE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79945-COA

FILED

OCT 16 2020

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

ORDER OF AFFIRMANCE

John Eugene Doane appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 14, 2019. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Doane's petition was untimely because it was filed more than 37 years after entry of the judgment of conviction on March 30, 1982, and more than 26 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Thus, Doane's petition was untimely filed.¹ *See* NRS 34.726(1). Moreover, Doane's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(2). Doane's petition was procedurally barred absent a demonstration of good

¹Doane did not pursue a direct appeal from entry of this judgment of conviction.

²*Doane v. Warden*, Docket No. 19649 (Order Dismissing Appeal, November 21, 1989).

cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, Doane was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Doane claimed the United States Supreme Court decision in *Maples v. Thomas*, 565 U.S. 266, 282-83 (2012), provided good cause to assert that his attorney improperly abandoned him in 1982. To demonstrate good cause, “a petitioner must show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, the claim of good cause must be raised within a reasonable time. *Id.* at 251, 71 P.3d at 505. One year provides sufficient time to present a claim that was not factually or legally available at the time of the procedural default. *Rippo*, 134 Nev. at 422, 423 P.3d at 1097. Doane’s petition was filed more than one year after *Maples* was decided, and accordingly, his good-cause claim was not raised within a reasonable time. Therefore, we conclude the district court did not err by concluding Doane was not entitled to relief.

Second, Doane appeared to assert that the procedural bars did not apply to his petition because the sentencing court lacked subject matter jurisdiction over this matter as the district court judge should have been disqualified from presiding over this case. However, this claim did not implicate the jurisdiction of the courts, *see* Nev. Const. art. 6, § 6(1); NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)), and therefore, the procedural bars apply to Doane’s petition. Moreover, the factual basis for

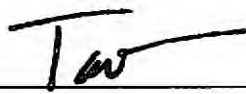
Doane's underlying claim was reasonably available to be raised in a timely filed petition, and Doane did not demonstrate an impediment external to the defense prevented him from doing so. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Therefore, we conclude the district court did not err by concluding Doane was not entitled to relief.

Third, Doane's good-cause claims did not overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2). Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

Finally, Doane argues the district court erred by denying his request for 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
John Eugene Doane
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk