

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMARIAN ANTOINE CLEMONS,  
Appellant,  
vs.  
OFFENDER MANAGEMENT  
DIVISION; AND THE STATE OF  
NEVADA,  
Respondents.

No. 80561-COA

**FILED**

NOV 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

DeMarian Antoine Clemons appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 25, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Clemons's petition alleged he was entitled to work credits because he wanted to work but was unable to. Further, his petition alleged he was entitled to the credits under the Americans with Disabilities Act (ADA). Clemons'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 raised the same claims. *See* NRS 34.810(2). Clemons's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(3).

In his petition, Clemons alleged he was filing a second petition in order to exhaust his claims for federal purposes. However, filing a procedurally barred petition for exhaustion purposes does not amount to good cause. *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). Further, Clemons cannot demonstrate prejudice because his work credits claim was barred by the doctrine of law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); *Clemons v. Offender Mgmt. Div.*, Docket No. 71233-COA (Order of Affirmance, February 23, 2017). And his ADA claim was outside the scope of claims permissible to be raised in a postconviction petition for a writ of habeas corpus because it challenged the conditions of confinement. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
DeMarian Antoine Clemons  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk