

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LIONEL BERRY COLLINS, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80253-COA

FILED

NOV 23 2020

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

ORDER OF AFFIRMANCE

Lionel Berry Collins, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Collins argues the district court erred by denying his petition and later-filed supplement as procedurally barred. Collins filed his petition on December 17, 2018, more than seven years after entry of the judgment of conviction on April 18, 2011.¹ Thus, Collins's petition was untimely filed. *See* NRS 34.726(1). Moreover, Collins's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.² *See* NRS 34.810(2). Collins's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Collins claimed he had good cause to overcome the procedural bars because his postconviction counsel failed to adequately research and

¹Collins did not pursue a direct appeal.

²*Collins v. State*, Docket No. 62933 (Order of Affirmance, April 10, 2014).


argue claims concerning the validity of his guilty plea during the proceedings regarding his prior postconviction petition. Collins contended the inadequate research and argument provided by his postconviction counsel amounted to abandonment and that abandonment constituted an impediment external to the defense.

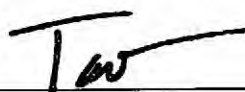
Collins's claim did not demonstrate postconviction counsel had abandoned him or severed the attorney-client relationship; rather, the record clearly shows that postconviction counsel represented Collins throughout the postconviction proceedings. *See Maples v. Thomas*, 565 U.S. 266, 282-83 (2012) (determining that where the attorney has abandoned the client the attorney client relationship has been severed and any error cannot fairly be attributed to the client). Collins's allegations amount to mere attorney error, and attorney error that does not rise to the level of ineffective assistance of counsel is not an impediment external to the defense, because the attorney is acting as the agent of the petitioner and the petitioner bears the risk of attorney error. *See Crump v. Warden*, 113 Nev. 293, 304, 934 P.2d 247, 253 (1997). And because the appointment of counsel was not constitutionally required or mandated by statute in this matter, Collins cannot demonstrate a claim of ineffective assistance of postconviction counsel provided good cause to overcome the procedural bars. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014).

Moreover, claims stemming from the proceedings concerning Collins's first petition were reasonably available to be raised within one year after the Nevada Supreme Court issued the remittitur on appeal from the order denying his prior petition, and Collins did not explain why he waited more than four years to raise such claims. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must

be raised within one year of its becoming available). Therefore, 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. Kathleen E. Delaney, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk