

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVINE D. BATTLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81177-COA

FILED

DEC 18 2020

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

ORDER OF AFFIRMANCE

Evine D. Battle appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 6, 2020. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Battle's petition was untimely because it was filed more than three years after the remittitur on direct appeal was issued on September 7, 2016,¹ *see* NRS 34.726(1), and it was successive because Battle previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits,² *see* NRS 34.810(2). These procedural bars are unexcused because Battle made no attempt to show good cause for filing a late and successive petition.³ *See* NRS 34.726(1); NRS 34.810(3). Therefore, we

¹*See Battle v. State*, Docket No. 68744 (Order of Affirmance, August 10, 2016).

²*See Battle v. State*, Docket No. 74773-COA (Order of Affirmance, January 17, 2019).

³Battle claims on appeal there was good cause to excuse his procedural bars. However, he did not raise these good cause claims in his petition, and we decline to consider them for the first time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on*

conclude the district court did not err by denying Battle's petition, *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining that the application of procedural bars is mandatory), and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Evine D. Battle
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

other grounds by Means v. State, 120 Nev. 1001, 1012-23, 103 P.3d 25, 33 (2004).

⁴We deny Battle's "[m]otion to stay the proceedings and or to continue his case for the next six months."