

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

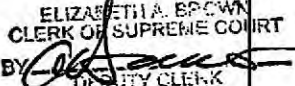
WILLIAM DEAN BONEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

WILLIAM DEAN BONEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81203-COA

FILED

MAR 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

No. 81204-COA

ORDER OF AFFIRMANCE

William Dean Boney appeals from two district court orders dismissing identical postconviction petitions for a writ of habeas corpus filed on April 30, 2018, in district court case numbers CR-09-1250B (Docket No. 81203-COA) and CR-09-1378B (Docket No. 81204-COA). Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Boney filed his petitions more than seven years after issuance of the remittiturs on direct appeal on October 27, 2010. *See Boney v. State*, Docket No. 55957 (Order of Affirmance, September 29, 2010) (CR-09-1250B); *Boney v. State*, Docket No. 55958 (Order of Affirmance, September 29, 2010) (CR-09-1378B). Thus, Boney's petitions were untimely filed. *See* NRS 34.726(1). Moreover, Boney's petitions were successive because he had previously filed postconviction petitions for a writ of habeas corpus that

were decided on the merits.¹ See NRS 34.810(2). Boney's petitions were procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Boney argues he demonstrated good cause to overcome the procedural bars because he was unlearned in the law and did not understand that, if a claim from a previous petition was not raised on appeal from the denial of that petition, it would not be exhausted for federal habeas purposes. He claimed this constituted an impediment external to his defense. Boney's inability to understand federal exhaustion did not constitute an impediment external to the defense that prevented him from presenting his claims in properly filed petitions or on appeal from the denial of those petitions. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Therefore, he failed to demonstrate this claim provided good cause. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

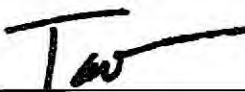
To the extent Boney claimed his failure to exhaust his claims for federal purposes would constitute good cause, this claim lacked merit. Exhaustion of state remedies in order to seek federal review is insufficient to demonstrate cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *superseded by statute on other grounds as stated in State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012). Finally, to the extent Boney claimed he had good cause because prior postconviction counsel was ineffective, this claim lacked merit. Ineffective assistance of postconviction counsel does not provide good cause to overcome the

¹*Boney v. Warden*, Docket Nos. 65536, 65537 (Order of Affirmance, November 12, 2014).

procedural bars. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Therefore, we conclude the district court did not err by dismissing the petitions as procedurally barred, and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk