

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82374-COA

FILED

JUN 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio Perez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Perez argues the district court erred by denying the petition as procedurally barred without first conducting an evidentiary hearing. Perez filed his petition on June 4, 2020, more than one year after entry of the judgment of conviction on August 14, 2018.¹ Thus, Perez's petition was untimely filed. *See* NRS 34.726(1). Moreover, Perez'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 it 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). Perez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS

¹Perez's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Perez v. State*, Docket No. 77205 (Order Dismissing Appeal, November 5, 2018). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

²*Perez v. State*, Docket No. 78635-COA (Order of Affirmance, January 24, 2020).

34.726(1); NRS 34.810(3). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

Perez did not explain why he did not raise his underlying claims in his first petition, and he did not attempt to demonstrate good cause to overcome the procedural bars. Therefore, we conclude the district court did not err by denying the petition as procedurally barred without conducting an evidentiary hearing. *See id.* at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars).

Next, Perez appears to argue the district court erred by failing to appoint 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 did not appoint counsel to represent Perez. Because the petition was subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not err by denying the petition without appointing postconviction counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Antonio Perez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk