

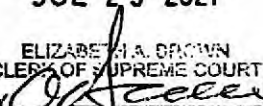
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 80738-COA

FILED

JUL 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin D. Porter appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Porter argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Porter filed his petition on July 5, 2019, more than eight years after issuance of the remittitur on direct appeal on December 3, 2010. *Porter v. State*, Docket No. 54866 (Order of Affirmance, November 8, 2010). Thus, Porter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Porter's petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Porter's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS

¹*Porter v. State*, Docket No. 70206-COA (Order of Affirmance, August 11, 2016); *Porter v. State*, Docket No. 64996 (Order of Affirmance, July 14, 2014); *Porter v. State*, Docket No. 60843 (Order of Affirmance, February 13, 2013).

34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Porter was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

First, Porter appeared to argue he had good cause because postconviction counsel was not appointed to assist him with his first petition. The appointment of postconviction counsel in this matter was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, the failure to appoint postconviction counsel did not provide good cause to overcome the procedural bars in this matter. Moreover, claims stemming from the proceedings concerning Porter'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 that petition, and Porter did not explain why he waited more than six 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, Porter was not entitled to relief based upon this claim.

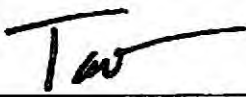
Next, Porter argues on appeal that he has good cause because he has a low IQ, was a juvenile when he entered the prison system, does not understand the legal process, and believed trial counsel would pursue postconviction relief. However, Porter did not raise these fact-based, good-cause claims in his petition, and we decline to consider them in the first instance on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d

1263, 1276 (1999). We take no position as to whether these issues can be raised in a future petition.

Porter thus did not demonstrate good cause to overcome the procedural bars. In addition, Porter fails to demonstrate the district court erred by concluding he failed to overcome the presumption of prejudice to the State. Therefore, Porter fails to demonstrate the district court erred by denying the petition without conducting an evidentiary hearing. *See Rubio*, 124 Nev. 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk