

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL MELENDEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82000-COA

FILED

AUG 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Manuel Melendez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 27, 2020. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Melendez's petition was untimely because it was filed more than eight years after the remittitur on direct appeal was issued on February 7, 2012,<sup>1</sup> and more than eight years after the amended judgment of conviction was entered on April 25, 2012.<sup>2</sup> See NRS 34.726(1). Moreover, Melendez'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.<sup>3</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2).

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<sup>1</sup>See *Melendez v. State*, Docket No. 57594 (Order Affirming in Part, Reversing in Part and Remanding, January 12, 2012).

<sup>2</sup>Melendez did not pursue a direct appeal from his amended judgment of conviction.

<sup>3</sup>See *Melendez v. State*, Docket No. 80472-COA (Order of Affirmance, September 23, 2020); *Melendez v. State*, Docket No. 65526-COA (Order of


Consequently, Melendez's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Melendez appeared to allege he had good cause because his claims regarding double jeopardy and presentence credit cannot be procedurally barred. These underlying claims were always available to be raised. Because Melendez failed to state why he was unable to raise these claims in a timely filed postconviction petition, they did not constitute good cause to excuse the procedural bars. See *Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003) (“[A] claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay.”). Therefore, we conclude the district court did not err by denying Melendez's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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Affirmance, July 14, 2015). Melendez also filed a postconviction petition for a writ of habeas corpus in the district court on January 27, 2020, but he did not appeal from the district court order denying that petition.

cc: Hon. Tierra Danielle Jones, District Judge  
Manuel Melendez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk