

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES EDWARD CROSS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82573-COA

**FILED**

AUG 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James Edward Cross appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Cross argues the district court erred by denying his November 9, 2020, petition as procedurally barred. Cross filed his petition more than 20 years after issuance of the remittitur on direct appeal on September 6, 2000. *See Cross v. State*, Docket No. 32533 (Order Dismissing Appeal, August 11, 2000). Thus, Cross's petition was untimely filed. *See* NRS 34.726(1). Moreover, Cross'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>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Cross's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

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<sup>1</sup>*See Cross v. State*, Docket No. 77223-COA (September 20, 2019); *Cross v. State*, Docket No. 59712 (Order of Affirmance, June 14, 2012); *Cross v. State*, Docket No. 58153 (Order of Affirmance, September 15, 2011); *Cross v. State*, Docket No. 45194 (Order of Affirmance, December 21, 2005).

First, Cross appeared to claim that *Polk v. Sandoval*, 503 F.3d 903 (9th Cir. 2007), and *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008), provided good cause to excuse the delay in raising claims regarding the premeditation and deliberation jury instruction. However, Cross has previously raised this good-cause claim, and the Nevada Supreme Court concluded Cross was not entitled to relief. *Cross v. State*, Docket No. 58153 (Order of Affirmance, September 15, 2011). The doctrine of the law of the case prevents further litigation of this issue. *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). And Cross did not demonstrate an exception to the application of the law of the case to this matter. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007). Therefore, Cross was not entitled to relief based upon this good-cause claim.

Second, Cross claimed he had cause for his delay because he is not permitted to physically access the law library and has to rely on the paging system to conduct legal research. “[A]n inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.” *See Lewis v. Casey*, 518 U.S. 343, 351 (1996). Rather, a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *See id.* Cross did not explain how a lack of physical access to the law library caused his entire delay in filing the instant petition. Moreover, Cross previously filed several postconviction petitions for a writ of habeas corpus and other documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to legal materials or to the prison law library. Therefore, Cross was not entitled to relief based upon this good-cause claim.


Third, Cross appeared to claim that the procedural bars did not apply to his petition because the district court lacked subject matter

jurisdiction concerning his case because his judgment of conviction is void. However, Cross's claim did not implicate the jurisdiction of the courts, and therefore, he failed to demonstrate the procedural bars did not apply to his petition. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). Therefore, Cross was not entitled to relief based upon this good-cause claim.

Finally, Cross appears to assert on appeal that the district court erred by adopting the State’s proposed order denying his petition. Cross does not identify any factual inaccuracy or legal reason why the district court should not have adopted and signed the proposed draft order. Moreover, Cross does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. See NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, we conclude Cross is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Ronald J. Israel, District Judge  
James Edward Cross  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk