

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN EDWARD BUTLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82966-COA

FILED

SEP 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *E. A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Edward Butler appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Butler argues the district court erred by denying his petition as procedurally barred. Butler filed his petition on January 5, 2021, more than ten years after issuance of the remittitur on direct appeal on March 23, 2010. *See Butler v. State*, Docket No. 52260 (Order of Affirmance, February 25, 2010). Thus, Butler's petition was untimely filed. *See* NRS 34.726(1). Moreover, Butler'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.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Butler'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).

First, Butler asserted that the procedural bars did not apply to his petition because the State of Nevada lacked jurisdiction to prosecute because the offenses were committed on federal land managed by the

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<sup>1</sup>*See Butler v. State*, Docket No. 69953 (Order of Affirmance, June 15, 2017).

Bureau of Land Management. “Every person . . . is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.” NRS 171.010. “Once the state produces evidence that the crime took place in the county, it is incumbent upon the defendant to prove that the incident took place on lands over which the United States has exclusive jurisdiction.” *Pendleton v. State*, 103 Nev. 95, 99, 734 P.2d 693, 695 (1987).

Here, Butler did not demonstrate that jurisdiction in his case rested exclusively in federal court and, thus, failed to satisfy his burden of proving the State of Nevada lacked jurisdiction over his case. *See id.* (finding that, “[b]ecause there is no evidence that Nevada has ever ceded exclusive jurisdiction over the lands in question to the United States,” the petitioner’s claim that the federal court had exclusive jurisdiction over offenses committed on lands managed by the Bureau of Land Management lacked merit). Therefore, Butler was not entitled to relief based upon this claim.


Second, Butler argued he had good cause because he recently discovered previously unraised claims. However, Butler’s underlying claims were reasonably available to have been raised during the timely filing period for a postconviction petition, and Butler did not demonstrate an impediment external to the defense prevented him from raising those claims in a timely manner. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying this good-cause claim.


Third, Butler appeared to argue he had good cause due to the ineffective assistance of postconviction counsel. 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). Because Butler did not have a constitutional or statutory right to postconviction counsel, he had no right to the effective assistance of postconviction counsel. Moreover, claims stemming from the proceedings

concerning Butler'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 Butler did not explain why he waited more than three 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, Butler was not entitled to relief based upon this claim.

Butler next argues on appeal that the district court erred by denying his request for the appointment of 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 declined to appoint counsel. Because the petition was subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
John Edward Butler  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk