

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOE GUTIERREZ PICENO, A/K/A NOE
GUTIERREZ-PICENO,
Appellant,
vs.
TIM GARRETT, WARDEN,
Respondent.

No. 82506-COA

FILED

SEP 24 2021

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

ORDER OF AFFIRMANCE

Joe Gutierrez Piceno appeals from an order of the district court denying a postconviction petition for writ of habeas corpus filed on October 29, 2020. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Piceno filed his petition more than 20 years after issuance of the remittitur on direct appeal on September 13, 2000. *See Gutierrez-Piceno v. State*, Docket No. 29860 (Order Dismissing Appeal, August 18, 2000). Thus, Piceno's petition was untimely filed. *See* NRS 34.726(1). Moreover, Piceno's petition was successive because he had previously filed postconviction petitions for a writ of habeas corpus that were 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 petitions.¹ *See* NRS 34.810(2).

¹*See Piceno v. State*, Docket No. 64395 (Order of Affirmance, September 16, 2014); *Gutierrez-Piceno v. State*, Docket No. 57391 (Order of

Piceno's petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(3), or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

First, Piceno claimed he had good cause because his counsel was ineffective. This claim did not demonstrate good cause because it did not explain the entire delay and Piceno failed to demonstrate that he could not have raised the underlying claims in a timely filed petition. *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Second, relying in part on *Martinez v. Ryan*, 566 U.S. 1 (2012), Piceno claimed he had good cause because he was not appointed counsel in his first postconviction proceedings. The Nevada Supreme Court has already considered and rejected this good-cause claim. *Piceno v. State*, Docket No. 64395 (Order of Affirmance, September 16, 2014). Because this claim has already been considered and rejected, the doctrine of the law of the case prevents further consideration of this issue. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

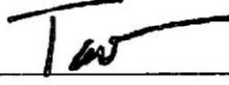
Finally, Piceno asserted he was factually innocent. Piceno did not provide any factual support for this claim. Piceno thus did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light

Affirmance, July 13, 2011). Piceno did not appeal the denial of his first petition, which was filed in the district court on September 9, 2001.

of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Therefore, Piceno was not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carli Lynn Kierny, District Judge
Joe Gutierrez Piceno
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk