

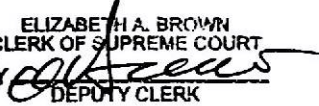
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82130-COA

FILED

SEP 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Frank Milford Peck appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 10, 2020. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Peck filed his petition nearly 20 years after issuance of the remittitur on direct appeal on September 19, 2000. *See Peck v. State*, 116 Nev. 840, 7 P.3d 470 (2000). Thus, Peck's petition was untimely filed. *See NRS 34.726(1)*. Moreover, Peck'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

¹*See Peck v. State*, Docket No. 72849-COA (Order of Affirmance, December 14, 2017); *Peck v. State*, Docket No. 65521 (Order of Affirmance, November 13, 2014); *Peck v. State*, Docket No. 60878 (Order of Affirmance, January 16, 2013); *Peck v. State*, Docket No. 60343 (Order of Affirmance,

See NRS 34.810(1)(b)(2); NRS 34.810(2). Peck'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, Peck alleged he had good cause because the courts lacked subject matter jurisdiction and the Nevada Revised Statutes lacked an enacting clause. This court has already considered and rejected this good-cause claim. See *Peck v. State*, Docket No. 72849-COA (Order of Affirmance, December 14, 2017). 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).


Second, Peck appeared to claim he had cause for his delay because the "information [was] not contained in prison law libraries." "[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.* Peck did not explain how a lack of information in the law library caused his entire delay in filing the instant petition. Moreover, Peck had previously made the same jurisdiction claim, which indicated he was able to access the

December 12, 2012); *Peck v. State*, Docket No. 57968 (Order of Affirmance, July 15, 2011); *Peck v. State*, Docket No. 42672 (Order of Affirmance, July 11, 2005).

information. Therefore, we conclude the district court did not err by denying Peck's petition as procedurally barred, see *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003), and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk