

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN KALANI BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82589-COA

FILED

OCT 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Shawn Kalani Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus and “motion to amend habeas corpus.” Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Brown argues the district court erred by denying his petition as procedurally barred. Brown’s November 9, 2020, petition was successive because he had previously filed a postconviction petition 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 petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Brown’s petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(1)(b); NRS 34.810(3). Brown did not assert in his petition that he

¹Brown filed a postconviction petition for a writ of habeas corpus in the district court on November 15, 2018. Brown subsequently voluntarily withdrew that petition.

had good cause to overcome the procedural bars. Accordingly, Brown did not meet his burden to plead good cause sufficient to overcome the procedural bars. See NRS 34.810(3); *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

Next, Brown appears to argue on appeal that the district court erred by denying the petition without conducting an evidentiary hearing concerning the merits of his claims. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Brown did not demonstrate good cause, he fails to demonstrate the district court erred by declining to conduct an evidentiary hearing concerning his procedurally barred claims. *Id.* at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars).

Next, Brown appears to argue 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.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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

²Brown fails to demonstrate that the district court erred by denying his “motion to amend habeas corpus.”