

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES RAPHAEL SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82997-COA

FILED

OCT 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Raphael Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 18, 2021. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Smith filed his petition over two years after entry of the judgment of conviction on September 17, 2018.¹ Thus, Smith's petition was untimely filed. *See* NRS 34.726(1). Moreover, Smith'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.² *See* NRS 34.810(2). Smith's petition was

¹Smith did not file a direct appeal.

²Smith did not appeal the denial of his previous petition, which was filed in the district court on July 22, 2019.

procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

First, Smith claimed he had good cause because his judgment of conviction was invalid and not final because it did not include a payment structure to pay restitution. This claim was reasonably available to be raised within one year of entry of the judgment of conviction, and Smith did not explain his delay in raising such a claim. 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, Smith failed to demonstrate good cause. Further, the Nevada Supreme Court has held “that a judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment.” *Whitehead v. State*, 128 Nev. 259, 263, 285 P.3d 1053, 1055 (2012). However, a judgment of conviction that sets forth a specific dollar amount of restitution sufficiently specifies the terms of restitution. *Id.* Here, Smith’s judgment of conviction ordered him to pay \$5,000 in restitution to Victims of Crime. Thus, the judgment of conviction was a final judgment because it imposed a specific restitution obligation. Therefore, he also failed to demonstrate actual prejudice. Accordingly, we conclude the district court did not err by denying this good-cause claim.

Second, Smith claimed the United States Supreme Court’s decision in *United States v. Davis*, 588 U.S. ___, 139 S. Ct. 2319 (2019), was new case law and provided good cause. Smith’s petition was filed nearly two years after the *Davis* decision, and Smith could have raised claims stemming from the *Davis* decision in his first petition, which was filed in

the district court after *Davis* was issued. Smith did not explain his delay in raising his good-cause claim. *See Rippo*, 134 Nev. at 422, 423 P.3d at 1097. Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Charles Raphael Smith
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk