

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KHALED ISMAIL MUBARAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82318-COA

FILED

OCT 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Khaled Ismail Mubarak appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Mubarak argues the district court erred by denying his petition as procedurally barred. Mubarak filed his petition on July 28, 2020, more than four years after entry of the judgment of conviction on July 15, 2016.¹ Thus, Mubarak's petition was untimely filed. See NRS 34.726(1). Moreover, Mubarak's petition was successive because he 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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Mubarak'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, Mubarak claimed he had good cause due to ineffective assistance of trial-level counsel. "[I]n order to constitute adequate cause,

¹Mubarak did not pursue a direct appeal.

²*Mubarak v. State*, Docket No. 74673-COA (Order of Affirmance, October 12, 2018).

the ineffective assistance of counsel claim itself must not be procedurally defaulted.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Mubarak’s ineffective-assistance-of-counsel claims were themselves procedurally barred because he raised them in an untimely, successive, and abusive petition. Mubarak’s underlying claims of ineffective assistance of trial-level counsel were reasonably available to have been raised during the timely filing period for a postconviction petition, and Mubarak did not demonstrate an impediment external to the defense prevented him from raising those claims in a timely manner. *See id.* at 252-53, 71 P.3d at 506. Accordingly, we conclude the district court did not err by denying this good-cause claim.

Second, Mubarak appeared to argue he had good cause due to the ineffective assistance of postconviction counsel because counsel filed a poorly drafted first petition. The appointment of postconviction counsel in this matter was not statutorily or constitutionally required; thus, Mubarak had no right to the effective assistance of postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Moreover, claims stemming from the proceedings concerning Mubarak’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 Mubarak did not explain why he waited more than a year to raise such claims. *See Rippon 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, the district court did not err by denying this good-cause claim.

Next, Mubarak argues on appeal that he had good cause because he was incompetent and because he was abandoned by his counsel. Mubarak did not raise these good-cause claims before the district court. We decline to consider arguments not raised in the district court in the first

instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Therefore, Mubarak is not entitled to relief based upon these claims.

Next, Mubarak argues on appeal that the district court should have conducted 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 Mubarak did not demonstrate good cause sufficient to overcome application of the procedural bars, he failed to demonstrate the district court should have conducted 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).

Finally, Mubarak argues on appeal that the district court erred by adopting the State's proposed order denying his petition without providing its own findings concerning Mubarak's petition. Mubarak also contends he should have been given the opportunity to review and respond to the proposed order before the district court adopted it.

Mubarak does not identify any inaccuracies contained within the district court's order. In addition, the record demonstrates that the district court announced its findings at the hearing concerning the petition, and those findings provided sufficient guidance concerning Mubarak's petition and the application of the procedural bars to allow the State to draft a proposed order. In addition, Mubarak does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review.

Moreover, as previously discussed, the district court properly denied Mubarak's petition as procedurally barred, and therefore, any failure of the district court to ensure that he had an opportunity to review and respond to the proposed order was harmless. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); *Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007) (stating that when a district court requests a party to prepare a proposed order, the court must ensure that the other parties are aware of the request and given the opportunity to respond to the proposed order). Accordingly, we conclude Mubarak is not entitled to relief based upon this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Monica Trujillo, District Judge
AMD Law, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk