

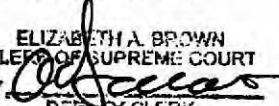
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY CEPERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82674-COA

FILED

OCT 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Billy Cepero 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.

Cepero argues the district court erred by denying his petition as procedurally barred. Cepero filed his petition on September 28, 2020, more than ten years after entry of the judgment of conviction on August 27, 2010.¹ Thus, Cepero's petition was untimely filed. See NRS 34.726(1). Moreover, Cepero's 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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Cepero's petition was procedurally barred absent a demonstration of good cause and

¹Cepero's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Cepero v. State*, Docket No. 57061 (Order Dismissing Appeal, March 17, 2011). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

²*Cepero v. State*, Docket No. 67076-COA (October 19, 2015).

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actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Cepero was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

First, Cepero appeared to claim he had good cause because his counsel was ineffective for failing to discuss a plea deal with him. “[I]n order to constitute adequate cause, 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). Cepero’s claim was based upon information contained within the trial record since 2009. Cepero’s underlying claim was reasonably available to have been raised during the timely filing period for a postconviction petition, and Cepero did not demonstrate an impediment external to the defense prevented him from raising it 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.

Cepero also did not overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

Next, Cepero requested 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.

Finally, Cepero argues 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 Cepero 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Monica Trujillo, District Judge
Billy Cepero
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk