

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARSHALL C. GREENE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83003-COA

FILED

NOV 05 2021

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

ORDER OF AFFIRMANCE

Marshall C. Greene appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 24, 2021. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Greene filed his petition over five years after issuance of the remittitur on direct appeal on January 12, 2016. *See Greene v. State*, Docket No. 66276 (Order of Affirmance, December 18, 2015). Thus, Greene's petition was untimely filed. *See* NRS 34.726(1). Moreover, Greene'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.¹ *See* NRS 34.810(2). Greene's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).


¹Greene previously filed a postconviction petition for a writ of habeas corpus in the district court on July 11, 2016. His appeal from the denial of that petition was untimely, and it was dismissed. *See Greene v. State*, Docket No. 80240 (Order Dismissing Appeal, February 21, 2020).


Greene argued he had good cause to file his petition because postconviction counsel was ineffective for failing to file a notice of appeal from the denial of his previous petition. Because the appointment of counsel in the prior postconviction proceeding was not statutorily or constitutionally required, *see Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996), Greene was not entitled to the effective assistance of postconviction counsel, *see Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Thus, his claim did not provide good cause to overcome the procedural bars.

Further, even assuming ineffective assistance of postconviction counsel could be considered good cause, Greene did not file his petition within a reasonable time of discovering that postconviction counsel did not file a direct appeal on his behalf. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim became available). Greene knew in December 2019 that counsel did not file the notice of appeal but did not file his petition until February 24, 2021, more than one year later. 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
Marshall C. Greene
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk