

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS LAMAR COTTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83308-COA

FILED

NOV 17 2021

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

ORDER OF AFFIRMANCE

Thomas Lamar Cotton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 18, 2021. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Cotton argues the district court erred by denying his claims that counsel was ineffective for failing to interrogate witnesses and failing to communicate with him before and during trial. He also claims cumulative error entitles him to relief. These claims were not raised in Cotton's petition filed below, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Next, Cotton argues the district court erred by denying his claim that the State committed prosecutorial misconduct by referencing uncharged acts. This claim was raised in Cotton's amended petition filed on May 13, 2021. The district court did not give Cotton permission to file an amended petition and did not consider this claim in its order denying

Cotton's petition. We conclude the district court did not abuse its discretion by failing to consider this claim below, *see* NRS 34.750(5), and we decline to consider it for the first time on appeal, *McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

Next, Cotton argues the district court erred by denying his claim that the State committed misconduct by eliciting perjured testimony. This claim could have been raised on direct appeal and was procedurally barred absent a demonstration of good cause and prejudice. *See* NRS 34.810(1)(b)(2). Cotton failed to allege good cause and prejudice to overcome the procedural bar. Therefore, we conclude the district court did not err by denying this claim.

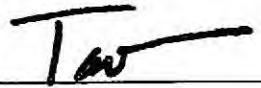
Next, Cotton argues the district court erred by denying his claims that the trial court abused its discretion by admitting evidence of the knives and by failing to allow instructions on the defense theory of the case. These claims were raised in Cotton's direct appeal and, therefore, were barred by the doctrine of law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Thus, we conclude the district court did not err by denying these claims.

Finally, Cotton appears to argue the district court erred by denying his claim that counsel was ineffective for failing to file a direct appeal on his behalf. This claim was raised in a previous petition filed by Cotton and he already won relief on this claim: Cotton was allowed to file an untimely direct appeal pursuant to NRAP 4(c). *See Cotton v. State*, No. 77994-COA, 2020 WL 1972298 (Nev. Ct. App. Apr. 23, 2020) (Order of

Affirmance). Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹The district court denied Cotton's petition as procedurally barred on the ground that it was untimely and successive because Cotton had previously filed a postconviction petition for a writ of habeas corpus. We conclude this was error. As a result of the prior petition, Cotton was granted a new appeal pursuant to NRAP 4(c). Under NRAP 4(c)(5), Cotton's petition was timely from the remittitur issued from that appeal. Further, NRAP 4(c)(5) states that a postconviction petition filed after an appeal pursuant to NRAP 4(c) is not considered a second and successive petition. Nevertheless, we conclude the district court reached the correct result, and we affirm the decision of the district court to deny the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (providing that this court will uphold a district court decision that "reaches the right result, although it is based on an incorrect ground").

cc: Hon. Tierra Danielle Jones, District Judge
Thomas LaMar Cotton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk