IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN RAY HOLMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82722-COA

FILED

NOV 24 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Ray Holmes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 2, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Holmes claims the district court erred by denying as procedurally barred his claims regarding the retroactive application of Marsy's Law.[1] Holmes filed his petition over 19 years after issuance of the remittitur on direct appeal on July 12, 2001. *See Holmes v. State,* Docket No. 35367 (Order of Affirmance, May 21, 2001). Thus, Holmes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Holmes' petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.[2] *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Holmes'

[1]Nev. Const. art. 1, § 8A.

[2]*See Holmes v. State,* No. 73913-COA, 2018 WL 3218904 (Nev. Ct. App. June 13, 2018) (Order of Affirmance); *Holmes v. State,* No. 68955, 2016 WL 1564252 (Nev. April 14, 2016) (Order of Affirmance); *Holmes v. State,* Docket No. 41065 (Order of Affirmance, January 2, 2004).

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).

Holmes appeared to argue he had good cause because Marsy's Law was newly enacted and, thus, the Nevada Department of Corrections (NDOC) improperly applied it to him retroactively. "[A] constitutional amendment adopted through the initiative process becomes effective on the canvass of the votes by the supreme court." *Miller v. Burk*, 124 Nev. 579, 589, 188 P.3d 1112, 1119 (2008) (internal quotation marks omitted). Accordingly, Marsy's Law became effective on the canvass of November 27, 2018. Holmes filed his petition over two years after the effective date. Because Holmes did not explain why he waited more than two years to raise this claim, it did not constitute good cause to excuse the procedural bars. *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, we conclude the district court did not err by denying Holmes' petition as procedurally barred.[3]

Holmes also asserts the district court erred by denying his claim that NDOC was violating the Ex Post Facto Clause by applying Marsy's Law retroactively and improperly collecting restitution from his account. Holmes contends this claim is timely because he filed it within 90 days of the first restitution payment. Even assuming Holmes demonstrated good cause, he could not demonstrate prejudice because this claim challenged the

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[3]For the first time on appeal, Holmes claims he has good cause because he initially filed this claim in the incorrect district court. We decline to consider this argument as it was not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

conditions of confinement and a postconviction petition for a writ of habeas corpus is not the proper vehicle to raise such a challenge. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, we conclude the district court did not err by denying this claim.[4]

Finally, Holmes asserts the district court erred by denying his claim challenging the computation of time he has served. The district court properly dismissed Holmes' challenge to the computation of time served without prejudice. *See* NRS 34.738(3). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Kevin Ray Holmes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[4]For the first time on appeal, Holmes contends NDOC's collection of restitution payments is a violation of the Double Jeopardy Clause and NDOC should be collaterally estopped from collecting the payments. We decline to consider these arguments as they were not raised in the district court in the first instance. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276.