

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS MARC GRIGSBY,
Appellant,
vs.
CALVIN JOHNSON, WARDEN,
Respondent.

No. 83152-COA

FILED

MAY 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dennis Marc Grigsby appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Grigsby argues the district court erred by denying his September 25, 2020, petition as procedurally barred without first conducting an evidentiary hearing. Grigsby filed his petition more than eight years after issuance of the remittitur on direct appeal on October 10, 2011. *See Grigsby v. State*, No. 53627, 2011 WL 4337042 (Nev. Sept. 14, 2011) (Order of Affirmance). Thus, Grigsby's petition was untimely filed. *See* NRS 34.726(1). Moreover, Grigsby'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(1)(b)(2); NRS 34.810(2). Grigsby'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). Further, because the State specifically pleaded laches, Grigsby was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Grigsby claimed he had good cause because he recently discovered that the trial court erred by failing to poll all of the jurors regarding the guilty verdict. Grigsby also contended he did not realize the significance of the trial court's error until the Supreme Court issued *Ramos v. Louisiana*, 590 U.S. ___, 140 S. Ct. 1390 (2020). Grigsby's claim concerning polling of the jury during his trial was reasonably available to have been raised during the timely filing period for a postconviction petition, and Grigsby did not demonstrate an impediment external to the defense prevented him from raising his claim in his previous petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Moreover, the opinion in *Ramos* had no effect upon Nevada's state courts. The *Ramos* court held that the Sixth Amendment requires a unanimous verdict to convict a criminal defendant. 590 U.S. at ___, 140 S. Ct. at 1394-

¹See *Grigsby v. State*, No. 68783, 2016 WL 3406625 (Nev. June 17, 2016) (Order of Affirmance).

97. However, Nevada already required a unanimous verdict for conviction of a criminal defendant. *See* NRS 175.481. Therefore, we conclude the district court did not err by rejecting this good-cause claim without conducting an evidentiary hearing.


Second, Grigsby claimed he had good cause due to the ineffective assistance of trial and appellate counsel. “[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.” *Hathaway*, 119 Nev. at 252, 71 P.3d at 506. Grigsby’s ineffective-assistance-of-counsel claims were themselves procedurally barred because he raised them in an untimely, successive, and abusive petition. Grigsby’s claims of ineffective assistance of trial and appellate counsel therefore did not demonstrate good cause to overcome the procedural bars. Accordingly, we conclude the district court did not err by rejecting this good-cause claim without conducting an evidentiary hearing.

Next, Grigsby argues on appeal the district court erred by denying the petition based upon laches. He contends that he would suffer a fundamental miscarriage of justice if his petition was not considered on its merits. Grigsby did not raise this claim before the district court, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

For the reasons discussed above, Grigsby failed to demonstrate good cause to overcome the procedural bars. Grigsby also failed to overcome the rebuttable presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying Grigsby’s petition as procedurally barred without conducting an evidentiary hearing.

Finally, Grigsby argues the district court erred by denying his request for 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk