

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 83440-COA
FILED

MAY 26 2022

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

ORDER AFFIRMING IN PART AND DISMISSING IN PART

Billy Cepero appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 28, 2020, in district court case no. A822031. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Cepero argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing or appointing counsel. Cepero filed his petition nearly 9 years after issuance of the remittitur on direct appeal on October 10, 2011, in district court case no. 09-C259024. Thus, Cepero's petition was untimely filed. *See* NRS 34.726(1). Cepero's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Cepero argued he had good cause because he only recently learned that counsel was offered a global plea agreement to resolve all of his cases. Cepero claimed that he did not receive counsel's file until several years after the remittitur was issued and he found the global offer in the files. Cepero previously raised this good-cause claim in a petition filed on January 31, 2013, and the denial of that petition was affirmed on appeal.

See *Cepero v. State*, No. 65785, 2015 WL 1280170, *1 (Nev. Mar. 17, 2015) (Order of Affirmance). Therefore, this good-cause claim is barred by the doctrine of law of the case. *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Accordingly, we conclude the district court did not err by denying the petition as procedurally barred without first conducting an evidentiary hearing. See *Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1233 n.53 (2008) (providing the district court need not conduct an evidentiary hearing on a procedurally barred claim where the petition cannot overcome the procedural bar).

Cepero also claims the district court erred by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because the district court granted leave to proceed in forma pauperis and his petition was a petition not subject to summary dismissal, see NRS 34.745(1), (4), Cepero met the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the record reveals that the issues in this matter were not difficult, Cepero was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Thus, we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel.

Insofar as Cepero's petition purported to challenge the proceedings in district court case no. 09-C259019, the State dismissed the

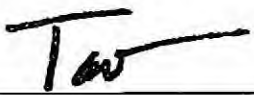
charges against Cepero in that case. Because there was no judgment of conviction or time served in that case, any claim regarding that case was outside the scope of a postconviction petition for a writ of habeas corpus. See NRS 34.724(1). Therefore, we conclude Cepero was not entitled to relief on any claim related to that case.

Finally, Cepero's petition challenged the convictions in district court case nos. 08-C241538 and 09-C259021, and the district court's order from which Cepero is currently appealing was filed in those underlying cases. However, the instant petition was also filed in those cases, the district court had previously denied those petitions, and this court affirmed those previous district court orders. See *Cepero v. State*, No. 82571-COA, 2021 WL 4398940 (Nev. Ct. App. Sept. 24, 2021) (Order of Affirmance); *Cepero v. State*, No. 82674-COA, 2021 WL 4786124 (Nev. Ct. App. Oct. 13, 2021) (Order of Affirmance). Because a second, duplicate appeal may not be pursued, we dismiss these portions of Cepero's appeal.

Having concluded that Cepero is not entitled to relief, we

ORDER the judgments of the district court AFFIRMED in part and DISMISSED in part.


_____, 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