

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD LEE MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83390-COA

FILED

JUN 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Lee Mitchell appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Mitchell argues the district court erred by dismissing his February 24, 2021, petition as procedurally barred. Mitchell filed his petition more than two years after entry of the judgment of conviction on January 17, 2019.¹ Thus, Mitchell's petition was untimely filed. See NRS 34.726(1). Mitchell's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.*

Mitchell claimed that the procedural time bar did not apply because the sentencing court did not impose a set amount of restitution, and therefore, his conviction was not final. The Nevada Supreme Court has held “that a judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment.” *Whitehead v. State*, 128 Nev. 259, 263, 285 P.3d 1053, 1055 (2012). Mitchell's claim was belied by the


¹Mitchell did not pursue a direct appeal.

record as the judgment of conviction plainly imposed restitution in the amount of \$108. Thus, the judgment of conviction specified the terms of Mitchell's restitution and was therefore a final judgment. Accordingly, Mitchell failed to demonstrate that the procedural time bar did not apply to his petition, and we conclude that the district court did not err by dismissing the petition as procedurally barred.

Next, Mitchell argues on appeal that the district court erred by denying his request to join this postconviction proceeding with one arising out of a separate criminal matter. Appellate courts review a district court's joinder decision for an abuse of discretion. *Farmer v. State*, 133 Nev. 693, 701, 405 P.3d 114, 122 (2017). The district court concluded that joinder of the different proceedings was not appropriate and denied Mitchell's request. Mitchell failed to demonstrate that the district court abused its discretion by denying joinder. Therefore, we conclude that Mitchell is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Mitchell appears to argue on appeal that he is entitled to relief due to application of *Martinez v. Ryan*, 566 U.S. 1 (2012). However, Mitchell did not raise this claim in his petition, and we decline to consider it on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Richard Lee Mitchell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk