

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84258-COA

FILED

JUL 26 2022

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

*ORDER OF AFFIRMANCE*

Frank Hearing, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 2, 2021. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hearing filed his petition nearly eight years after entry of the judgment of conviction on December 20, 2013.<sup>1</sup> Thus, Hearing's petition was untimely filed. *See* NRS 34.726(1). Hearing's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Hearing argues the district court erred by denying his petition as procedurally barred because he demonstrated good cause. Hearing claimed he had good cause because the district court erred by not construing his 2014 motion to withdraw guilty plea as a postconviction petition for a writ of habeas corpus. Hearing raised this good cause claim in a prior petition, and this court concluded it did not constitute good cause to overcome the procedural bar. *Hearing v. State*, No. 78791-COA, 2019 WL

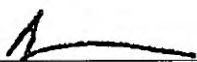
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<sup>1</sup>No direct appeal was taken.

7161736 (Nev. Ct. App. Dec. 20, 2019) (Order of Affirmance). Therefore, this good cause claim was 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), and we conclude the district court did not err by denying the petition as procedurally barred.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michelle Leavitt, District Judge  
Frank Herring, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Herring also failed to demonstrate the district court erred by denying his petition without first conducting an evidentiary hearing on his substantive claims. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (“The court may also reject a substantive post-conviction claim without an evidentiary hearing when the claim is procedurally barred and the defendant cannot overcome the procedural bar.”).

<sup>3</sup>The Honorable Jerome T. Tao did not participate in the decision in this matter.