

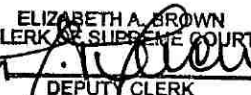
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
CALVIN JOHNSON, WARDEN,
Respondent.

No. 84776-COA

FILED

NOV 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bennett Grimes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 10, 2022. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Grimes filed his petition nearly eight years after issuance of the remittitur on direct appeal on March 24, 2014. *See Grimes v. State*, No. 62835, 2014 WL 819469 (Nev. Feb. 27, 2014) (Order of Affirmance). Thus, Grimes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Grimes' 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 petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Grimes' 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).

¹*See Grimes v. Warden*, No. 81697-COA, 2021 WL 2494015 (Nev. Ct. App. June 17, 2021) (Order of Affirmance); *Grimes v. State*, No. 74419-COA, 2018 WL 6721398 (Nev. Ct. App. Dec. 19, 2018) (Order of Affirmance).

Grimes argues the district court erred by denying his claim that he had good cause because appellate counsel was ineffective.² While the ineffective assistance of counsel may constitute good cause to excuse a procedural default, the ineffective-assistance claim must not itself be time barred. *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Here, Grimes' claims that appellate counsel was ineffective were available to be raised in a timely filed petition. Therefore, Grimes failed to demonstrate good cause to overcome the procedural bar, and we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²Grimes also argues that he had good cause to overcome the procedural bars because trial counsel was ineffective. Because Grimes failed to raise this claim below, we decline to consider this claim for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1275-76 (1999).