

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE W. LUSTER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84230-COA

GEORGE W. LUSTER, JR.,
Appellant,
vs.
THE STATE OF NEVADA; AND
CHARLES DANIELS, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondents.

No. 84236-COA

FILED

JAN 31 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

George W. Luster, Jr., appeals from orders of the district court denying a motion to correct an illegal sentence filed on February 10, 2021, in district court case number 95C132314 (Docket No. 84230), and a postconviction petition for a writ of habeas corpus filed on March 16, 2021, in district court case number A-20-810890-W (Docket No. 84236). These cases were consolidated on appeal. *See* NRAP 3(b). Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Motion to correct an illegal sentence

Luster seeks an order directing the district court to file a final, written order denying his motion to correct an illegal sentence. This court has already issued such an order, *see Luster v. State*, Docket Nos. 84230-COA, 84236-COA (Order Directing Entry and Transmission of Written

Order, January 4, 2023), and the district court entered a written order denying Luster's motion on January 6, 2023. Therefore, we conclude this claim is moot and Luster is not entitled to additional relief.

To the extent Luster challenges the district court's denial of his motion to correct an illegal sentence, Luster failed to include a copy of the motion in his appendix on appeal. Accordingly, we cannot conclude the district court erred by denying his motion. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *see also* NRAP 30(b)(3).

Postconviction petition for a writ of habeas corpus

Luster filed his petition more than 21 years after issuance of the remittitur on direct appeal on January 25, 2000. *See Luster v. State*, 115 Nev. 431, 991 P.2d 466 (1999). Thus, Luster's petition was untimely filed. *See* NRS 34.726(1). Moreover, Luster'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 petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Luster's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (3).

Luster did not allege good cause to overcome the procedural bars in his petition. While Luster alleged good cause below in his reply to

¹*Luster v. Daniels*, No. 81539-COA, 2021 WL 2025038 (Nev. Ct. App. May 20, 2021) (Order of Affirmance); *Luster v. State*, No. 70978-COA, 2017 WL 882074 (Nev. Ct. App. Feb. 23, 2017) (Order of Affirmance); *Luster v. State*, No. 56231, 2011 WL 1044680 (Nev. Mar. 18, 2011) (Order of Affirmance); *Luster v. State*, Docket No. 46872 (Order of Affirmance, July 5, 2006).

the State's response to his postconviction petition, these good cause claims were not properly raised in a reply, and the district court did not err by failing to address them. See NRS 34.750(5); *Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 651 (2006) (providing that the district court should only consider issues pleaded in the petition or supplemental petition to which the State has had an opportunity to respond).

Luster argues on appeal that his claims should be considered on the merits because the district court found the claims potentially had merit and appointed counsel to investigate them. He argues that good cause thus exists. Application of the procedural bars is mandatory, *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and the district court expressly concluded that Luster failed to demonstrate good cause. Therefore, we conclude Luster is not entitled to relief based on this claim.

For the foregoing reasons, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk