

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVEON KYREE HAYES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85334-COA

**FILED**

JAN 27 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daveon Kyree Hayes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 8, 2022. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Hayes' petition was filed more than two years after issuance of the remittitur on direct appeal on August 13, 2019. *See Hayes v. State*, No. 75405-COA, 2019 WL 3231008 (Nev. Ct. App. July 17, 2019) (Order of Affirmance). Thus, Hayes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Hayes' 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 petition.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Hayes' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (3).

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<sup>1</sup>*See Hayes v. Gittere*, No. 83421, 2021 WL 4238029 (Nev. Sept. 16, 2021) (Order Dismissing Appeal).

Hayes claimed the procedural bars should not apply because his counsel failed to provide him with records related to his case. However, counsel's alleged failure to provide records does not constitute cause for the delay because it did not prevent Hayes from filing a timely petition. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Therefore, we conclude the district court did not err by rejecting his good-cause claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Monica Trujillo, District Judge  
Daveon Kyree Hayes  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>On appeal, Hayes contends the district court did not rule on his motion for leave to proceed in forma pauperis. However, the record indicates that the district court granted his motion on March 21, 2022. Therefore, Hayes is not entitled to relief on this claim.