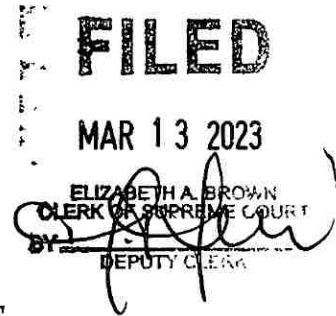


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY WAYNE CONNORS,
Appellant,
vs.
KYLE OLSEN, WARDEN WSCC,
NDOC,
Respondent.

No. 85026-COA



ORDER OF AFFIRMANCE

Timothy Wayne Connors appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Connors argues that the district court erred by denying his February 24, 2022, petition and later-filed supplements as procedurally barred. Connors filed his petition more than 23 years after issuance of the remittitur on direct appeal on August 18, 1998. *See Connors v. State*, Docket No. 27113 (Order Dismissing Appeal, July 28, 1998). Thus, Connors' petition was untimely filed. *See* NRS 34.726(1). Moreover, Connors' petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, 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). Connors'

¹*See Connors v. State*, No. 61749, 2015 WL 3669820 (Nev. June 10, 2015) (Order of Affirmance). Connors also filed a postconviction petition for a writ of habeas corpus in the district court on April 2, 2019, and the district court denied the petition. Connors filed an untimely notice of appeal following entry of the district court's order denying the petition, and the

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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). Further, because the State specifically pleaded laches, Connors was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Connors claimed that he had good cause because officials at the Nevada Department of Corrections prevented him from filing a timely notice of appeal following the denial of his 2019 petition. “[A] claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay.” *Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003). Connors’ underlying claims challenged his judgment of conviction, and those claims were reasonably available to have been raised for more than 20 years. Connors’ allegation concerning his attempt in 2019 to file a notice of appeal from the denial of an earlier petition does not explain his entire delay in raising claims challenging the judgment of conviction. Therefore, Connors did not demonstrate good cause to overcome the procedural bars, and Connors was not entitled to relief based on this claim.

Second, Connors claimed that the procedural bars should not apply because his 2022 petition and supplements should relate back to a petition he filed in 1999. “Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The procedures set forth in NRCP 15 that would allow for an amended

Nevada Supreme Court dismissed the appeal for lack of jurisdiction. *See Connors v. Warden*, No. 79840, 2019 WL 6119437 (Nev. Nov. 15, 2019) (Order Dismissing Appeal).

pleading to relate back to a previously filed pleading are inapplicable to a postconviction petition for a writ of habeas corpus because those procedures are inconsistent with the supplemental-pleadings rules set forth in NRS Chapter 34. *State v. Powell*, 122 Nev. 751, 757-58, 138 P.3d 453, 457 (2006). Because the relation-back procedures set forth in NRCP 15 did not apply to Connors' postconviction proceedings, Connors' 2022 petition and supplements did not relate back to an already-denied petition. Therefore, the district court did not err by applying the procedural bars to Connors' petition, and Connors was not entitled to relief based on this claim.

Third, Connors appeared to assert that the procedural bars should not apply because he wished to exhaust state remedies in order to proceed in federal court. Exhaustion of state remedies in order to seek federal court review is insufficient to demonstrate good cause. *See Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *superseded by statute on other grounds as stated in State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012). Accordingly, Connors was not entitled to relief based on this claim.

Connors also appears to argue on appeal that he had good cause due to issues stemming from the COVID-19 pandemic. However, Connors did not raise this good-cause claim in his petition, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Moreover, Connors did not overcome the presumption of prejudice to the State. *See* NRS 34.800(2). For the foregoing reasons, we conclude the district court did not err by denying the petition as procedurally barred.

Finally, Connors appears to argue on appeal that the district court should have conducted an evidentiary hearing concerning the merits of his underlying claims. A district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars. *Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n. 53 (2008). Because Connors did not demonstrate good cause to overcome application of the procedural bars, he failed to demonstrate the district court should have conducted an evidentiary hearing concerning his procedurally barred claims. Therefore, Connors is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Timothy Wayne Connors
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Michael Gibbons did not participate in the decision in this matter.