

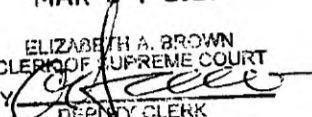
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALLIER WILLIAM TOMPKINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85219-COA

FILED

MAR 24 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Vallier William Tompkins appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on April 28, 2022. Second Judicial District Court, Washoe County; Jerome M. Polaha, Senior Judge.

Tompkins filed his petition more than nine years after entry of the judgment of conviction on October 30, 2012. Thus, Tompkins' petition was untimely filed. *See* NRS 34.726(1). Moreover, Tompkins' petition 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(2). Tompkins' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Tompkins contended that he had good cause to overcome the procedural bars because he could not raise his claims of ineffective

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<sup>1</sup>*See Tompkins v. Warden*, No. 68349, 2016 WL 757138 (Nev. Ct. App. Feb. 17, 2016) (Order of Affirmance).

assistance of counsel until the Nevada Supreme Court issued its decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021). *Gonzales* did not announce a new rule of law; rather, the supreme court merely clarified that NRS 34.810(1)(a) never precluded claims that counsel rendered ineffective assistance at sentencing. *See id.* at 403, 492 P.3d at 562 (“In sum, we explicitly hold today what has been implicit in our caselaw for decades.”). As such, Tompkins could have raised his claims prior to the supreme court’s decision in *Gonzales*. *See Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) (“A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.”); *see also Nika v. State*, 124 Nev. 1272, 1286, 198 P.3d 839, 849 (2008) (discussing when a “state court interpretation of a state criminal statute constitutes a change in—rather than a clarification of—the law”). Therefore, Tompkins failed to demonstrate good cause to overcome the procedural bars, and we conclude the district court did not err by dismissing the petition as procedurally barred.


We also conclude the district court did not abuse its discretion by denying Tompkins’ motion for the appointment of postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. As previously discussed, Tompkins’ petition constituted an abuse of the writ, and Tompkins failed to demonstrate good cause to overcome this procedural bar. Because the petition was subject to summary

dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Second Judicial District Court  
Hon. Jerome M. Polaha, Senior Judge  
Vallier William Tompkins  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk