

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EUGENE ANTHONY LINDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85021-COA

FILED

APR 12 2023

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

ORDER OF AFFIRMANCE

Eugene Anthony Linder appeals from an amended order of the district court denying a postconviction petition for a writ of habeas corpus¹ and supplemental pleadings. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Linder argues the district court erred by denying his petition without first conducting an evidentiary hearing concerning one of his ineffective-assistance-of-counsel claims. For the reasons discussed below, we conclude Linder did not demonstrate good cause sufficient to overcome application of the procedural bars, and therefore, an evidentiary hearing on his ineffective-assistance-of-counsel claims was not required. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars).

¹Linder filed a motion to vacate a judgment of conviction, but the district court construed the motion to be a postconviction petition for a writ of habeas corpus.

In this case, Linder filed his petition on June 8, 2016, more than 10 years after entry of the judgment of conviction.² Thus, Linder's petition was untimely filed. See NRS 34.726(1). Moreover, Linder'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 petition.³ See NRS 34.810(2). Linder's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). For the reasons set forth below, Linder did not overcome the procedural bars.

The district court erred in finding that Linder demonstrated good cause to overcome the procedural bars because Linder was not represented by counsel during the proceedings on his first petition and because one of his claims had not been fully litigated in his previous petition and other filings. Linder was not entitled to the appointment of postconviction counsel. See *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Thus, Linder's lack of postconviction counsel did not provide good cause to overcome the procedural bars. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014).

Further, while the district court did not explain what "fully litigated" means, Linder argued his claim had not been fully litigated because he was unlearned in the law and could not properly raise his claim

²No direct appeal was taken.

³See *Linder v. State*, Docket No. 48369 (Order of Affirmance, April 24, 2007).

in his prior petition. Linder's lack of legal knowledge did not constitute an impediment external to the defense that prevented Linder from timely raising his claim. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *see also Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (providing that mental disability, illiteracy, or lack of an inmate law clerk do not excuse the procedural bars), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Thus, Linder's claim did not provide good cause to overcome the procedural bars.

Linder also argues in his reply that the district court could have found he had good cause to overcome the procedural bars because he did not discover some of the evidence supporting his claim of ineffective assistance of counsel until approximately 2013. Linder failed to raise this claim in a timely manner, *see Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding that a good-cause claim must be raised within one year of its becoming available), and Linder did not demonstrate an impediment external to the defense prevented him from raising this claim at an earlier time, *see Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Thus, Linder's claim did not provide good cause to overcome the procedural bars.

Linder next argues in his reply that the district court could have found he had good cause to overcome the procedural bars because he could not raise his claim of ineffective 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, Linder could have raised this claim 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, Linder fails to demonstrate good cause to overcome the procedural bars.

Based on the foregoing, we conclude that the district court reached the correct result in denying the petition, albeit for the wrong reasons. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk