

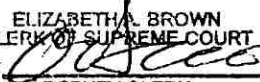
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH MARTIN NORTON, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85123-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Martin Norton, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 7, 2022.¹ Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

The district court found that the petition was procedurally time barred and was not in the proper form as required by NRS 34.735. Norton filed his petition more than one year after entry of the judgment of conviction on February 5, 2021.² Thus, Norton's petition was untimely filed. *See* NRS 34.726(1). Moreover, Norton's petition constituted an abuse of the

¹Norton's pleading was titled "writ of habeas corpus/motion to withdraw plea," which the district court construed as a postconviction petition for a writ of habeas corpus pursuant to *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014). Norton does not challenge this determination on appeal.

²Norton did not appeal from his judgment of conviction.

writ as he raised claims new and different from those raised in his previous petitions.³ See NRS 34.810(2). Norton's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Norton did not argue below that he had good cause to overcome the procedural bars. On appeal, Norton argues that he had good cause because postconviction counsel and trial counsel were ineffective. Because Norton did not make this argument below, we decline to consider it for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Norton also argues the district court erred by denying his petition based on it not being in the proper form. He claims the errors should be forgiven because postconviction counsel was ineffective. Norton was not entitled to the effective assistance of postconviction counsel because the appointment of postconviction counsel was not statutorily or


³Norton filed postsentence motions to withdraw guilty plea on February 18, 2021, and February 23, 2021, just a few days after entry of the judgment of conviction. The district court did not relate the instant petition back to the February 2021 motions as it denied the instant petition as untimely. As a result, the February 2021 motions are outstanding. The district court should construe the motions, either collectively or individually, as a postconviction habeas petition pursuant to *Harris*. We are confident the district court will adjudicate those pleadings as quickly as its calendar permits.

constitutionally required in this case. *See Brown v. McDaniel*, 130 Nev. 565, 569-70, 331 P.3d 867, 870 (2014). Thus, Norton failed to demonstrate he was entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
The Gersten Law Firm PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk