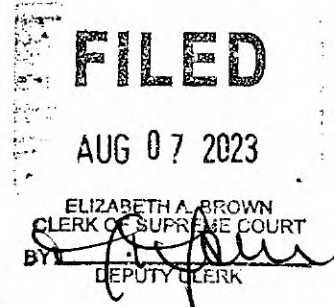


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCHEMAJ GRAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85724-COA



*ORDER OF AFFIRMANCE*

Schemaj Gray appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 10, 2022. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Gray filed his petition more than one year after issuance of the remittitur on direct appeal on January 8, 2021. *See Gray v. State*, No. 79797, 2020 WL 7351276 (Nev. Dec. 14, 2020) (Order of Affirmance). Thus, Gray's petition was untimely filed. *See* NRS 34.726(1). Moreover, Gray'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.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2).<sup>2</sup> Gray's petition was procedurally barred absent a demonstration

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<sup>1</sup>*See Gray v. State*, Nos. 83892-COA, 83893-COA, 2022 WL 1907668 (Nev. Ct. App. June 2, 2022) (Order of Affirmance).

<sup>2</sup>The references in the text are to NRS 34.810 as written before its 2023 amendment. *See* A.B. 49, 82d Leg. (Nev. 2023). The 2023 amendments affect the paragraph numbering, not the substance.

of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Gray did not allege below that he had good cause to overcome the procedural bars. For the first time on appeal, Gray claims that lockdowns imposed due to the COVID-19 pandemic prevented him from filing a timely petition. We decline to consider this argument as it was not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Therefore, we conclude the district court did not err by denying Gray's petition as procedurally barred.

Gray also appears to argue for the first time on appeal that the State improperly changed language in the indictment, the district court erred by allowing the State to make the changes, his due process rights were violated by the changes, and counsel was ineffective for failing to object to the changes. We decline to consider these arguments as they were not raised in the district court in the first instance. *See id.*

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Schemaj Gray  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk