

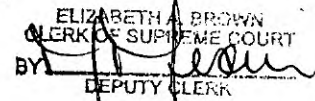
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ESTEBAN HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85176-COA

FILED

AUG 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Esteban Hernandez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 25, 2022. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hernandez filed his petition more than 22 years after entry of the judgment of conviction on October 12, 1999.¹ Thus, Hernandez's petition was untimely filed. See NRS 34.726(1). Moreover, Hernandez previously filed several postconviction petitions for a writ of habeas corpus.² Hernandez's petition was successive to the extent it alleged grounds for relief that had previously been decided on the merits, and it constituted an

¹Hernandez did not pursue a direct appeal.

²*Hernandez v. Warden*, No. 82035-COA, 2021 WL 2026223 (Nev. Ct. App. May 20, 2021) (Order of Affirmance); *Hernandez v. State*, No. 74843-COA, 2018 WL 5881627 (Nev. Ct. App. Nov. 6, 2018) (Order of Affirmance); *Hernandez v. State*, No. 70205, 2016 WL 3150858 (Nev. June 3, 2016) (Order Dismissing Appeal); *Hernandez v. State*, No. 60246, 2012 WL 801770 (Nev. Oct. 8, 2012) (Order of Affirmance); *Hernandez v. State*, Docket No. 40117 (Order of Affirmance, June 25, 2003); *Hernandez v. State*, Docket No. 36916 (Order of Affirmance, November 15, 2001); *Hernandez v. State*, Docket No. 35462 (Order of Affirmance, November 21, 2000).

abuse of the writ to the extent it raised new and different grounds for relief. *See* NRS 34.810(1)(b)(2); NRS 34.810(3).³ Therefore, Hernandez’s petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (4).

In his petition, Hernandez claimed his plea was involuntary because the trial-level court improperly interfered with the plea negotiations and the State made an “illusory promise” in his plea agreement. Hernandez further claimed that he had good cause to overcome the procedural bars because he “lacked access to the evidence needed to prove his claims through no fault of his own.” In particular, Hernandez claimed that (1) after years of diligence, he recently obtained an unsealed copy of the minutes from the July 8, 1999, entry of his plea; and (2) he cannot obtain a transcript of the allegedly improper negotiations because the trial-level court did not have the negotiations transcribed as required in *Cripps v. State*, 122 Nev. 764, 137 P.3d 1187 (2006).

Hernandez was present at the entry of his guilty plea, and he does not explain why he could not have raised his claims in a timely petition even without access to the sealed minutes and transcript. We note Hernandez raised in a prior postconviction habeas petition the claim that the trial-level court improperly interfered with the plea negotiations. *See Hernandez*, Docket No. 36916. As such, Hernandez’s purported lack of access to evidence did not prevent him from raising his claims earlier.

In addition, Hernandez did not allege that he attempted to obtain the sealed minutes and transcript before the one-year deadline for

³The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. *See* A.B. 49, 82d Leg. (Nev. 2023).

filing his petition had passed.⁴ Hernandez also did not allege that an impediment external to the defense prevented him from obtaining the sealed minutes. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Indeed, trial-level counsel requested that the negotiations be sealed. And the non-existence of a transcript of these negotiations would not constitute good cause, because the trial-level court was not required to transcribe the negotiations at the time Hernandez entered his plea. *See Cripps*, 122 Nev. at 770, 137 P.3d at 1191 (stating its holding that a district court must ensure that its participation in the plea process is placed on the record and transcribed applies “only to future cases to be commenced in the courts below”).

Therefore, Hernandez failed to demonstrate good cause to overcome the procedural bars. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

⁴Hernandez referenced two federal habeas petitions as evidence of his efforts to obtain the sealed minutes and transcript. The record also includes a request for subpoena filed in state district court seeking “papers, documents and other transcripts” related to the guilty plea hearing. All of these documents were filed in or after 2001, which is after the one-year deadline for filing a timely postconviction habeas petition had passed.

cc: Hon. Michelle Leavitt, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk