


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARNELL WEBSTER,
Appellant,
vs.
FERNANDIES FRAZIER, WARDEN,
NNCC; AND THE STATE OF NEVADA,
Respondents.

No. 86351-COA

FILED

AUG 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darnell Webster appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Webster filed his petition on December 9, 2022, more than two years after issuance of the remittitur on direct appeal on June 5, 2020. *See Webster v. State*, No. 78763-COA, 2020 WL 2461415 (Nev. Ct. App. May 11, 2020) (Order of Affirmance). Thus, Webster's petition was untimely filed. *See* NRS 34.726(1). Moreover, Webster'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.¹ *See* NRS 34.810(3).² Webster's petition was procedurally barred

¹*See Webster v. State*, No. 85472, 2022 WL 14285834 (Nev. Oct. 24, 2022) (Order Dismissing Appeal).

²The 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).

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absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

Webster claimed he had good cause to overcome the procedural bars because he could not raise his claims 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, Webster 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”). Thus, Webster failed to demonstrate good cause to overcome the procedural bars. Therefore, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Darnell Webster
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk