

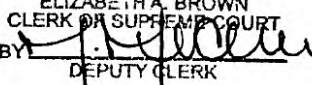
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MILTON DAVID PLUMMER,  
Appellant,  
vs.  
TIM GARRETT, WARDEN,  
Respondent.

No. 87275-COA

FILED

APR 29 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

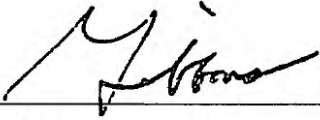
ORDER OF AFFIRMANCE

Milton David Plummer appeals from a district court order denying a May 5, 2023, postconviction petition for a writ of habeas corpus challenging the computation of time served. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Plummer argues the district court erred in concluding that his petition was procedurally barred pursuant to NRS 34.810. In support, he relies on *Phelps v. Dir., Nev. Dep't of Prisons*, which states that the respondent must affirmatively raise such procedural bars before a district court can dismiss on those grounds. 104 Nev. 656, 659, 764 P.2d 1303, 1305-06 (1988). However, the Nevada Supreme Court recognized that the following year, the Legislature abrogated this portion of *Phelps* and now “expressly provides that the petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim or for presenting a claim again and actual prejudice.” *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003) (internal quotation

marks omitted); *see* NRS 34.810(3).<sup>1</sup> Accordingly, we conclude Plummer is not entitled to relief on this argument, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Jim C. Shirley, District Judge  
Milton David Plummer  
Attorney General/Carson City  
Attorney General/Las Vegas  
Pershing County District Attorney  
Clerk of the Court/Court Administrator

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<sup>1</sup>The 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).

<sup>2</sup>To the extent Plummer seeks to overturn the Nevada Supreme Court's holding that application of the procedural bars is mandatory, *see State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), "this court cannot overrule Nevada Supreme Court precedent," *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 n.7 (Ct. App. 2023).