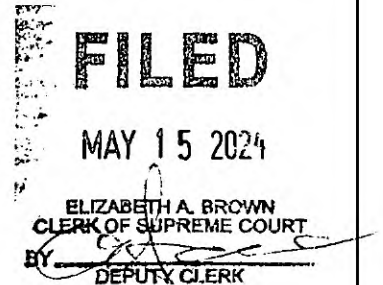


IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO ALBERTO HERRADA-  
GONZALEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85881



*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Appellant Mario Herrada-Gonzalez was convicted of first-degree murder with the use of a deadly weapon and robbery with the use of a deadly weapon. On direct appeal, this court affirmed the murder conviction and reversed the robbery conviction. *Herrada-Gonzalez v. State (Herrada-Gonzalez I)*, No. 57582, 2014 WL 549407 (Nev. Feb. 10, 2014) (Order Affirming in Part and Reversing in Part). In 2016, Herrada-Gonzalez filed a postconviction petition for a writ of habeas corpus. This court affirmed the district court's denial of that petition, *Herrada-Gonzalez v. State (Herrada-Gonzalez II)*, No. 77840, 2020 WL 1903193 (Nev. Apr. 16, 2020) (Order of Affirmance), and remittitur issued on May 11, 2020. On August 2, 2022, Herrada-Gonzalez filed a second petition raising collateral challenges to the conviction and sentence. The district court denied the petition as procedurally barred. Herrada-Gonzalez appeals, and we affirm.

As Herrada-Gonzalez concedes, his current petition is subject to multiple procedural bars. The petition was untimely, because it was filed over 8 years after remittitur issued from Herrada-Gonzalez's direct appeal. See NRS 34.726(1). The petition was also successive because Herrada-

Gonzalez had previously filed a postconviction petition, and it constituted an abuse of the writ because Herrada-Gonzalez raised claims new and different from those raised in the previous petition, which were therefore also subject to waiver. *See* NRS 34.810(1)(b), (2).<sup>1</sup> Petitions that are untimely, successive, or an abuse of the writ are subject to dismissal absent a showing of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(1)(b), (3). To establish good cause, “a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

As good cause to overcome the procedural bars, Herrada-Gonzalez argues that first postconviction counsel provided ineffective assistance. This argument is precluded by our decision in *Brown v. McDaniel*, 130 Nev. 565, 331 P.3d 867 (2014). As a noncapital petitioner, Herrada-Gonzalez was not entitled to the appointment of postconviction counsel. *See id.* at 571, 331 P.3d at 871-72 (explaining that NRS 34.750(1) “provides for the discretionary appointment of counsel to represent noncapital habeas petitioners”). Because appointment of postconviction counsel was not mandated, Herrada-Gonzalez had no constitutional or statutory right to the effective assistance of that counsel. *See id.* at 569, 331 P.3d at 870. As we explained in *Brown*, “[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel.” *Id.* (quoting *McKague v. Whitley*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)). And we decline Herrada-Gonzalez’s invitation to reconsider our

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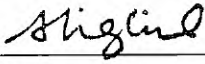
<sup>1</sup>The Legislature recently made a technical amendment to NRS 34.810, which renumbered the subsections. A.B. 49, 82d Leg. (Nev. 2023). We use the numbering in effect when the district court dismissed Herrada-Gonzalez’s postconviction petition.

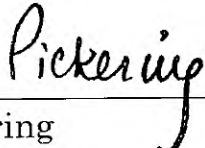
prior decision as he has not demonstrated that *Brown* was erroneously decided or is unworkable. *See State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) (“[W]hen governing decisions prove to be unworkable or are badly reasoned, they should be overruled.” (internal quotation marks omitted)).

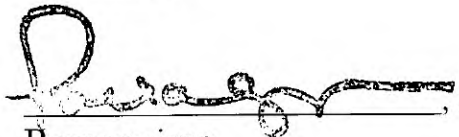
Furthermore, even were we to reconsider *Brown*, Herrada-Gonzalez would not be entitled to relief. Herrada-Gonzalez filed the petition over two years after remittitur issued in the first postconviction appeal. *See Herrada-Gonzalez II*, 2020 WL 1903193. Thus, Herrada-Gonzalez’s claims of ineffective assistance of first postconviction counsel would be untimely under NRS 34.726(1), as they were not raised within one year after the remittitur issued in the first postconviction appeal. *Rippo v. State*, 134 Nev. 411, 419-22, 423 P.3d 1084, 1095-97 (2018). Herrada-Gonzalez does not address or explain the delay in raising the postconviction-counsel claims. Thus, even crediting Herrada-Gonzalez’s arguments that *Brown* should be reconsidered, Herrada-Gonzalez has not shown that relief is warranted.

Because “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Herrada-Gonzalez failed to demonstrate any grounds to excuse those procedural default rules, the district court did not err in denying Herrada-Gonzalez’s petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Tierra Danielle Jones, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk