


IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD TAYLOR,  
Appellant,  
vs.  
WARDEN NDOC; AND JAMES  
DZURENDA, NDOC DIRECTOR,  
Respondents.

No. 86596

FILED

MAY 15 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

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; Monica Trujillo, Judge.

Appellant Donald Taylor was convicted of first-degree murder with the use of a deadly weapon, burglary while in possession of a firearm, conspiracy to commit robbery, and robbery with a deadly weapon. This court affirmed the judgment of conviction. *Taylor v. State (Taylor I)*, 132 Nev. 309, 371 P.3d 1036 (2016). In 2016, Taylor filed a postconviction petition for a writ of habeas corpus. This court affirmed the district court's denial of that petition, *Taylor v. State (Taylor II)*, No. 79218, 2020 WL 5652414 (Nev. Sept. 18, 2020) (Order of Affirmance), and remittitur issued on October 13, 2020. In 2021, Taylor filed a second postconviction habeas petition. The Court of Appeals affirmed the denial of the second petition, *Taylor v. State (Taylor III)*, No. 82882-COA, 2021 WL 5512810 (Nev. Ct. App. Nov. 24, 2021) (Order of Affirmance). On July 18, 2022, Taylor filed another postconviction habeas petition (his fourth) raising collateral

challenges to the conviction and sentence.<sup>1</sup> The district court denied the petition as procedurally barred. Taylor appeals, and we affirm.

As Taylor concedes, the current petition is subject to multiple procedural bars. The petition was untimely, because it was filed nearly 6 years after remittitur issued from Taylor's direct appeal. See NRS 34.726(1). The petition was also successive because Taylor had previously filed postconviction petitions, and it constituted an abuse of the writ because Taylor raised claims new and different from those raised in the previous petitions, which were therefore also subject to waiver. See NRS 34.810(1)(b), (2).<sup>2</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, Taylor 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, Taylor was not entitled to the appointment of postconviction counsel. See *id.* at 571, 331 P.3d at 871-

---

<sup>1</sup>In 2021, Taylor filed a third postconviction habeas petition and a "Motion to Challenge Senate Bill No. 182." This court dismissed Taylor's appeal from an order denying the motion. *Taylor v. State (Taylor IV)*, No. 85788, 2023 WL 1438941 (Nev. Jan. 9, 2023) (Order Dismissing Appeal).

<sup>2</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 denied Taylor's postconviction petition.

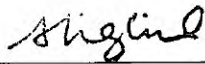
82 (explaining that NRS 34.750(1) “provides for the discretionary appointment of counsel to represent noncapital habeas petitioners”). Because appointment of postconviction counsel was not mandated, Taylor had no constitutional or statutory right to the effective assistance of that counsel. *See id.* at 569, 331 P.3d at 870. As we acknowledged 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 Taylor’s invitation to reconsider our prior decision as Taylor has not demonstrated that *Brown* was badly reasoned or 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)).

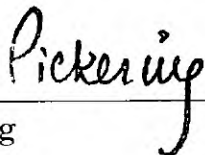
Furthermore, even were we to reconsider *Brown*, Taylor would not be entitled to relief. Taylor filed his fourth petition more than a year after remittitur issued in the first postconviction appeal (*Taylor II*). Thus, Taylor’s claims of ineffective assistance of first postconviction counsel would be 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). Taylor does not address or explain the delay in raising the postconviction-counsel claims. Thus, even crediting Taylor’s arguments that *Brown* should be reconsidered, Taylor has not shown that relief is warranted.

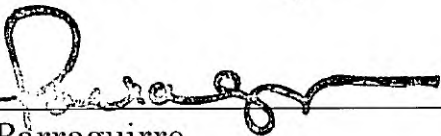
Because “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Taylor failed to demonstrate any grounds to excuse those procedural default rules, the

district court did not err in denying Taylor's petition as procedurally barred.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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