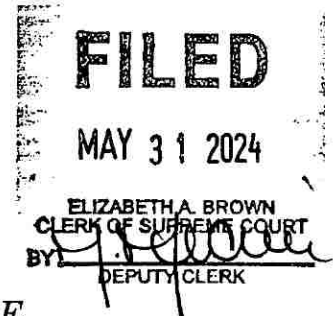


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87124-COA



ORDER OF AFFIRMANCE

Rahim Muhammad appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus and denying a motion for the appointment of postconviction counsel. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Muhammad filed his petition on February 27, 2023, more than three years after the Nevada Supreme Court issued its order granting Muhammad the voluntary dismissal of his direct appeal on September 4, 2019. *See Muhammad v. State*, No. 79223, 2019 WL 4196578 (Nev. Sep. 4, 2019) (Order Dismissing Appeal). Thus, Muhammad's petition was untimely filed. *See NRS 34.726(1); Gonzales v. State*, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002) (recognizing that where a timely direct appeal is voluntarily dismissed, the one-year time period for filing a postconviction petition for a writ of habeas corpus commences from the date of entry of this court's order granting the motion to voluntarily dismiss the appeal). Moreover, Muhammad's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, 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 Muhammad's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

First, Muhammad alleged he had good cause because the filing period was equitably tolled. The Nevada Supreme Court has rejected equitable tolling of the filing period set forth in NRS 34.726. See *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). Therefore, the district court did not err by denying this good-cause claim.

Second, Muhammad alleged he had good cause because forensic and police reports were improperly withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Although a valid *Brady* claim can constitute good cause to excuse the procedural bars, see *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003), a good-cause claim based on an alleged *Brady* violation must be raised "within a reasonable time after the withheld evidence was disclosed to or discovered by the defense," *State v. Huebler*, 128 Nev. 192, 198 n.3, 275 P.3d 91, 95 n.3 (2012).

Muhammad does not allege when he received the reports that he claims were withheld. And while Muhammad appeared to allege his lack of legal knowledge impacted his ability raise this claim earlier, a lack of legal knowledge would not constitute good cause because it was not an impediment external to the defense. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a

¹*Muhammad v. Baca*, No. 81367, 2021 WL 5992524 (Nev. Dec. 17, 2021) (Order of Affirmance).

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).

petitioner's claim of organic brain damage, borderline mental disability, and reliance on assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a procedurally barred postconviction petition), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Thus, Muhammad failed to demonstrate that his *Brady* claim was not itself untimely, and this claim did not constitute good cause. *See Lisle v. State*, 131 Nev. 356, 359-60, 351 P.3d 725, 728-29 (2015) (concluding *Brady* claim was untimely and could not constitute good cause where defendant failed to specify when he received the evidence or demonstrate the claim was raised within a reasonable time after discovery of the withheld evidence). Therefore, the district court did not err by denying this good-cause claim.

Finally, Muhammad appeared to allege he had good cause because postconviction counsel was ineffective for failing to take action after Muhammad notified her about the forensic reports. Muhammad was not entitled to the effective assistance of postconviction counsel because the appointment of postconviction counsel was not statutorily or constitutionally required in this case. *See Brown*, 130 Nev. at 569-70, 331 P.3d at 870. Therefore, the district court did not err by denying this good-cause claim. For the foregoing reasons, we conclude the district court did not err by dismissing the petition as procedurally barred.

Muhammad filed a motion for the appointment of postconviction counsel on February 27, 2023. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court summarily dismissed the petition because the petition was procedurally barred pursuant to NRS 34.810(3) and declined to appoint

counsel. Because the petition was subject to summary dismissal, *see* NRS 34.745(3), we conclude the district court did not abuse its discretion by declining to appoint counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Rahim Muhammad
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk