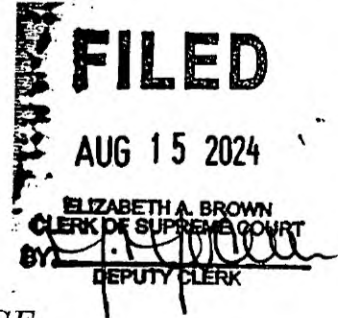


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN ALFONSO NUNO-VELASCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87561-COA



ORDER OF AFFIRMANCE

Juan Alfonso Nuno-Velasco appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 21, 2022. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Nuno-Velasco filed his petition more than 14 years after issuance of the remittitur on direct appeal on June 10, 2008. *See Nuno-Velasco v. State*, Docket No. 49574 (Order of Affirmance, May 16, 2008). Thus, Nuno-Velasco's petition was untimely filed. *See* NRS 34.726(1). Moreover, Nuno-Velasco'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

¹*See Nuno-Velasco v. State*, No. 61302, 2013 WL 3270890 (Nev. June 12, 2013) (Order of Affirmance).

See NRS 34.810(3).² Nuno-Velasco's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

Nuno-Velasco appeared to argue he had good cause to overcome the procedural bars because he had newly discovered evidence in the form of an executive agreement regarding his extradition from California to Nevada that provided the basis for his underlying claims. Nuno-Velasco alleged that official interference prohibited him from obtaining the executive agreement "for 20 years."

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). "An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Id.* (internal quotation marks omitted).

Even assuming an impediment external to the defense had prevented Nuno-Velasco from acquiring the executive agreement for a period of time, he filed the instant petition over one year after he attached a copy of the executive agreement to a petition for a writ of mandamus filed

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).


on May 11, 2021. *See Nuno-Velasco v. Sisolak*, No. 82879-COA, 2021 WL 4705234 (Nev. Ct. App. Oct. 7, 2021) (Order Denying Petition). Nuno-Velasco thus failed to raise this claim in a timely manner, *see Ripppo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding that a good-cause claim must be raised within one year of its becoming available), and he did not demonstrate good cause for raising his claims in the instant petition, *see Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Therefore, we conclude the district court did not err by denying Nuno-Velasco's petition as procedurally barred.

Nuno-Velasco argues the district court erred by denying his motion to appoint counsel. 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 found the petition was subject to summary dismissal because it was procedurally barred. Because the petition was subject to summary dismissal, *see* NRS 34.745(3), we conclude the district court did not err by declining to appoint counsel.

Nuno-Velasco also argues the district court erred by declining to conduct an evidentiary hearing. Because Nuno-Velasco failed to overcome the procedural bars, we conclude the district court did not err by denying his claims without conducting an evidentiary hearing. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims

that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tammy Riggs, District Judge
Juan Alfonso Nuno-Velasco
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³To the extent Nuno-Velasco attempts to raise new claims or argument on appeal, we decline to consider them in the first instance. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).