

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UBALDO SALDANA-GARCIA,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 87666-COA

FILED

DEC 24 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ubaldo Saldana-Garcia appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 26, 2023. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Saldana-Garcia filed his petition nearly eight years after issuance of the remittitur on direct appeal on March 27, 2015. *Saldana-Garcia v. State*, No. 62921, 2015 WL 918769 (Nev. Mar. 2, 2015) (Order of Affirmance). Thus, Saldana-Garcia's petition was untimely filed. See NRS 34.726(1). Moreover, Saldana-Garcia'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 See NRS 34.810(1)(b)(2); NRS 34.810(3).² Saldana-Garcia's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(4).

First, Saldana-Garcia argues the district court erred by denying his claim that his petition was timely filed from the date of the amended judgment of conviction.³ Initially, we note that "the entry of an amended judgment of conviction may in and of itself provide the good cause required by the statute to present appropriate post-conviction claims *relating to the amendment at issue.*" *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (emphasis added). Saldana-Garcia's claims do not challenge the amendments made to the judgment of conviction; instead, his claims relate to the proceedings involving the initial conviction. Nevertheless, Saldana-Garcia argues *Whitehead v. State*, 128 Nev. 259, 262, 285 P.3d 1053, 1055 (2012), distinguished *Sullivan* by holding that, if an amended judgment of conviction changes a term that is an integral part of the sentence, the one-year period for filing a timely postconviction habeas petition begins to run

¹*Saldana-Garcia v. State*, No. 74376-COA, 2018 WL 6433085 (Nev. Ct. App. Dec. 4, 2018) (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).

³The amended judgment of conviction was filed on November 23, 2021. Saldana-Garcia appealed from the amended judgment of conviction, and remittitur issued on December 12, 2022. *Garcia v. State*, No. 83971, 2022 WL 17037609 (Nev. Nov. 16, 2022) (Order of Affirmance).

from the amended judgment of conviction. He argues that the dismissal of 14 counts from his judgment of conviction was a change to an integral part of the sentence and that therefore his claims relating to the initial judgment of conviction and direct appeal are timely.

We conclude *Whitehead* does not apply to Saldana-Garcia's petition. *Whitehead* determined that the judgment of conviction at issue was not final because it failed to include an integral part of the sentence that was required by statute—the terms of imposed restitution. *Id.* at 262-63, 285 P.3d at 1055. Because the judgment of conviction was not final, it was “not sufficient to trigger the one-year period under NRS 34.726,” and thus the one-year period did not begin to run until the final judgment of conviction was subsequently entered. *Id.* at 263, 285 P.3d at 1055.

Here, Saldana-Garcia does not demonstrate that an integral part of his sentence was missing from his original judgment of conviction such that the one-year period for timely filing a postconviction habeas petition was not triggered. Thus, Saldana-Garcia does not demonstrate that the original judgment of conviction was not a final judgment. Further, Saldana-Garcia has litigated a direct appeal and timely postconviction petition from his original judgment of conviction and is estopped from arguing that the original judgment of conviction was not final. *See Witter v. State*, 135 Nev. 412, 415, 452 P.3d 406, 409 (2019) (acknowledging *Whitehead* but holding a defendant may not “treat a judgment of conviction with an indeterminate restitution provision as final by litigating a direct appeal and postconviction habeas petitions only to later change course and argue that the judgment was never final”). Therefore, we conclude the

district court did not err by finding that Saldana-Garcia's petition was untimely filed.

Second, Saldana-Garcia argues the district court erred by denying his claim that he could demonstrate good cause because the delay in filing the amended judgment of conviction was due to the State's misconduct. Saldana-Garcia fails to demonstrate good cause because he fails to show "that an impediment external to the defense prevented him . . . from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we conclude the district court did not err by finding that Saldana-Garcia did not demonstrate good cause based on this claim.

Finally, Saldana-Garcia argues the district court erred by denying his claim that he could demonstrate good cause based on postconviction counsel's ineffectiveness. The Nevada Supreme Court has held "[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel." *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (quoting *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)). The appointment of postconviction counsel was not mandated in this case; thus, Saldana-Garcia had no constitutional or statutory right to the effective assistance of that counsel. *Brown*, 130 Nev. at 569, 331 P.3d at 871. Therefore, we conclude the district court did not err by finding that Saldana-Garcia did not demonstrate good cause based

on this claim.⁴ Accordingly, the district court correctly denied Saldana-Garcia's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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

⁴Saldana-Garcia asks this court to overrule *Brown*. “[T]his 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). Further, we note the Nevada Supreme Court recently upheld *Brown* in an unpublished decision, *Coca v. State*, No. 85519, 2024 WL 1266990, *2 (Nev. Mar. 22, 2024) (Order of Affirmance).