


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO JOHN CAMACHO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88774-COA

**FILED**

APR 09 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Mario John Camacho appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 28, 2022. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Camacho filed his petition three years after issuance of the remittitur on direct appeal on April 12, 2019.<sup>1</sup> Thus, Camacho's petition was untimely filed. *See* NRS 34.726(1). Moreover, Camacho'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.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(3).<sup>3</sup> Camacho's

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<sup>1</sup>*See Camacho v. State*, No. 73380, 2019 WL 1277576 (Nev. Mar. 18, 2019) (Order of Affirmance).

<sup>2</sup>Camacho did not appeal the denial of his previous postconviction habeas petition.

<sup>3</sup>The 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).

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). “In order to demonstrate 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).

After the district court denied Camacho’s first postconviction petition, postconviction counsel sent Camacho a letter outlining two options: he could appeal the denial of his first petition to the Nevada Supreme Court or pursue federal habeas relief. Camacho asserts this advice from postconviction counsel caused him to forego an appeal from the denial of his first postconviction petition and thus provides him good cause to excuse his untimely and successive petition pursuant to *Hathaway* and *Harris v. State*, 133 Nev. 683, 407 P.3d 348 (Ct. App. 2017).

Camacho was not entitled to the appointment of postconviction counsel; thus, he had no right to the effective assistance of postconviction counsel and any such ineffective assistance would not constitute good cause. *See* NRS 34.750(1); *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014) (explaining that NRS 34.750(1) “provides for the discretionary appointment of counsel to represent noncapital habeas petitioners” and “that the ineffectiveness of counsel representing a noncapital petitioner does not constitute good cause to excuse a state procedural bar”).

Camacho’s pleadings below cite *Hathaway* and *Harris* and assert the ineffective assistance of postconviction counsel as good cause to excuse the untimely petition. However, Camacho did not assert below that counsel’s advice after the denial of his first postconviction habeas petition

constituted an impediment external to the defense, thus we need not address the merits of this argument on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). Furthermore, even if we were to address this argument, neither *Hathaway*, nor *Harris*, nor the logical extension of either affords Camacho good cause.

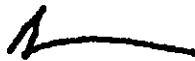
In *Hathaway*, trial counsel's failure to file a direct appeal despite his affirmative indication he would do so constituted an impediment external to the defense that provided good cause to excuse an untimely petition. 119 Nev. at 255, 71 P.3d at 508. *Hathaway* is premised on the right to the effective assistance of trial counsel. *See id.* at 254, 71 P.3d at 507 ("Trial counsel is ineffective if he or she fails to file a direct appeal after a defendant has requested or expressed a desire for a direct appeal . . ."). Unlike the petitioner in *Hathaway*, Camacho's argument is premised on the ineffective assistance of postconviction counsel, counsel to which Camacho was not entitled as a matter of right. *See Brown*, 130 Nev. at 569, 331 P.3d at 870 (reiterating that "where there is no right to counsel there can be no deprivation of effective assistance of counsel" (internal quotation marks omitted)); *Rippo v. State*, 134 Nev. 411, 423, 423 P.3d 1084, 1097 (2018) ("[U]nlike the rights to effective assistance of trial and appellate counsel, which are guaranteed by the Sixth and Fourteenth Amendments to the United States Constitutions, there is no recognized constitutional right to effective assistance of postconviction counsel." (internal citation omitted)).

In *Harris*, postconviction counsel indicated she would file a postconviction petition, but in fact did not. 133 Nev. at 688, 407 P.3d at 352. This court found counsel's failure and the petitioner's reliance on counsel's representation constituted good cause to excuse an untimely petition. *Id.* *Harris* recognized a limited circumstance where counsel's

failure to pursue postconviction relief may excuse an untimely petition. See *id.* at 693, 407 P.3d at 355-56 (requiring a petitioner filing an untimely petition to establish (1) a reasonable belief that counsel filed a petition; (2) the belief was objectively reasonable; (3) counsel did not file the petition; and (4) the petitioner filed a petition within a reasonable time after learning counsel did not file the petition). Even assuming *Harris* extended to the failure to pursue postconviction *appellate* relief, Camacho did not demonstrate he believed counsel filed a notice of appeal. And given counsel's correspondence advising Camacho it was his responsibility to file a notice of appeal, he did not demonstrate such a belief would have been reasonable. Because Camacho was aware no notice of appeal had been filed, he also did not demonstrate that he filed the instant petition within a reasonable time after discovering no appeal had been filed.

Lastly, Camacho's argument only relates to establishing good cause to excuse an untimely petition. He does not argue the district court erred in concluding he failed to demonstrate good cause to excuse the successive and abusive claims. We conclude the district court did not err by denying Camacho's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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