

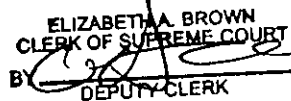
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMON LAMAR CAMPBELL,
Appellant,
vs.
WARDEN CHILDERS,
Respondent.

No. 89176-COA

FILED

MAY 06 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Damon Lamar Campbell appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 4, 2023. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Campbell argues the district court erred by denying his petition as procedurally barred without conducting an evidentiary hearing. Campbell filed his petition more than 19 years after issuance of the remittitur on direct appeal on August 8, 2003. *See Campbell v. State*, Docket No. 39127 (Order of Affirmance, July 14, 2003). Thus, Campbell's petition was untimely filed. *See* NRS 34.726(1). Moreover, Campbell'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 petitions.¹ *See* NRS 34.810(1)(b)(2); NRS

¹*See Campbell v. State*, Docket No. 44799 (Order of Affirmance, July 6, 2006). Campbell also filed a postconviction petition for a writ of habeas corpus in the district court on September 3, 2003. Campbell did not appeal from the district court's order denying that petition. Further, Campbell

34.810(3).² Campbell'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). Further, because the State specifically pleaded laches, Campbell was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Campbell contended his petition was timely filed from the date the amended judgment of conviction was filed.³ “[T]he 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). Most of Campbell's claims did not relate to the amendment of the judgment of conviction. Therefore, we conclude the entry of the amendment judgment of conviction did not provide good cause to excuse the procedural bars regarding those claims.

Campbell raised some claims that appear to relate to the amended judgment of conviction when he alleged the district court erred by failing to include the relevant sentencing statute addressing restitution, the

filed a postconviction petition for a writ of habeas corpus on March 17, 2022, that he later voluntarily dismissed.

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 district court entered an amended judgment of conviction on June 9, 2022. The sole amendment was to name the Victims of Crime program as the restitution recipient. The original judgment of conviction provided the restitution amount and ordered Campbell was jointly and severally liable with his codefendant for the restitution amount, but it did not identify to whom the restitution should be paid. Campbell did not appeal from the amended judgment of conviction.

names of the victims, and the amounts owed to each victim in the amended judgment of conviction. Although these claims appear to relate to the amendment to the judgment of conviction, Campbell did not demonstrate good cause for these claims because they could have been raised on direct appeal from the amended judgment of conviction and thus were not “appropriate post-conviction claims relating to the amendment at issue.” *Id.* And Campbell failed to allege or otherwise demonstrate why these claims could not have been raised on direct appeal from the amended judgment of conviction. See NRS 34.810(1)(b)(2); NRS 34.810(4); *Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021) (providing that a petitioner must identify on the face of the petition “the applicable procedural bars for *each* claim presented and the good cause that excuses those procedural bars”). Therefore, we conclude Campbell is not entitled to relief based on this claim.

Second, Campbell appeared to contend his claims were timely because no final judgment of conviction exists pursuant to *Whitehead v. State*, 128 Nev. 259, 262-63, 285 P.3d 1053, 1055 (2012), as the judgment of conviction and the amended judgment of conviction lack integral parts of his sentence: the relevant sentencing statute addressing restitution (NRS 176.033), the names of the restitution victims, and the amounts to be paid to each victim. In *Whitehead*, the Nevada Supreme Court held “that a judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment.” 128 Nev. at 263, 285 P.3d at 1055.

With regard to the original judgment of conviction, Campbell litigated a direct appeal and timely postconviction petition from that judgment of conviction and is thus estopped from arguing it 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”). With regard to the amended judgment of conviction, as is discussed above, it retained the restitution amount and the joint and several liability determination from the original judgment of conviction but added the recipient. Campbell failed to demonstrate a judgment of conviction must contain the relevant restitution statute or the names of the victims in order to be final. See NRS 176.105(1) (providing what a judgment of conviction must contain, including “the amount and terms” of restitution and “a reference to the statute under which the defendant is sentenced”). Thus, we conclude Campbell did not demonstrate his amended judgment of conviction is not final such that the one-year period under NRS 34.726 never began. Therefore, we conclude Campbell is not entitled to relief based on this claim.

Third, Campbell appeared to contend that, pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), the ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel would not be good cause in the instant case because the appointment of counsel in the prior postconviction proceedings was not statutorily or constitutionally required. *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Further, the Nevada Supreme Court has held that *Martinez* does not apply to Nevada’s statutory postconviction procedures. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331

P.3d 867, 871-72 (2014). Therefore, we conclude Campbell is not entitled to relief based on this claim.

Moreover, with regard to Campbell's claims unrelated to the amended judgment of conviction, Campbell did not overcome the presumption of prejudice to the State. See NRS 34.800 (outlining the presumed prejudice to the State and the petitioner's burden in rebutting that presumption). For the foregoing reasons, we conclude the district court did not err by denying Campbell's petition as procedurally barred 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).


Campbell also argues the district court erred by denying his request for the appointment of postconviction counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Here, the issues presented were not difficult, Campbell was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel.


Finally, Campbell raises additional arguments for the first time on appeal. Because Campbell did not raise these arguments below, we

decline to consider them for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
Damon Lamar Campbell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk