IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN MCKENDRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89101-COA

FILED

JUN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY_____
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sean McKendrick appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 20, 2023. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

McKendrick filed his petition more than two years after issuance of the remittitur on direct appeal on October 23, 2020. *McKendrick v. State*, No. 79372-COA, 2020 WL 5796181 (Nev. Ct. App. Sep. 28, 2020) (Order of Affirmance). Thus, McKendrick's petition was untimely filed. *See* NRS 34.726(1). Moreover, McKendrick'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 a new claim that was different from those raised in his previous petition.[1] *See* NRS 34.810(3).[2] McKendrick's petition was procedurally

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[1]*McKendrick v. State*, No. 82532-COA, 2022 WL 561513 (Nev. Ct. App. Feb. 23, 2022) (Order of Affirmance).

[2]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).

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barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(4).

McKendrick argues the district court erred by denying his claim that he had good cause to overcome the procedural bars because he was not appointed counsel during his previous postconviction habeas proceedings.[3] In his petition he argued that, without counsel, he was unable to present all his claims or to procure documentation to support his claims. We conclude this good-cause argument lacked merit. The appointment of counsel for the previous postconviction habeas petition was not statutorily or constitutionally required. *See Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996); *see also* NRS 34.750(1). Thus, the failure to appoint postconviction counsel did not provide good cause to overcome the procedural bars in this matter. *See Brown v. McDaniel*, 130 Nev. 565, 573-74, 331 P.3d 867, 873 (2014) (declining to follow federal caselaw allowing for the failure to appoint counsel to constitute good cause to overcome the procedural bars). Therefore, we conclude that the district court did not err by denying this good-cause claim.

McKendrick also argues the district court erred by denying his claim that he had good cause to overcome the procedural bars because his mental health issues prevented him from presenting and litigating his claims in the prior proceedings. McKendrick's mental health issues did not constitute good cause because they were 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 petitioner's claim of organic brain

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[3]We note that McKendrick retained counsel to appeal the denial of his previous petition.

damage, borderline mental disability, and reliance on assistance of 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). Therefore, we conclude the district court did not err by denying this good-cause claim. Thus, McKendrick did not demonstrate good cause to overcome the procedural bars, and we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
        Federal Public Defender/Las Vegas
        Attorney General/Carson City
        Clark County District Attorney
        Eighth District Court Clerk