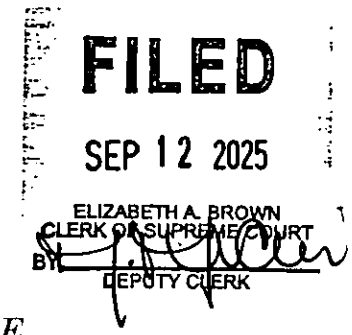
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JAMES WALSH,
Appellant,
vs.
WILLIAM HUTCHINGS, WARDEN;
AND THE STATE OF NEVADA,
Respondents.

No. 88248



ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Appellant Robert Walsh argues the district court erred in denying the postconviction habeas petition without conducting an evidentiary hearing. We disagree and affirm.

Walsh was convicted of trafficking in a controlled substance, and this court affirmed the judgment of conviction. *Walsh v. State (Walsh I)*, No. 66107, 2015 WL 6164024 (Nev. Oct. 16, 2015) (Order of Affirmance). Walsh filed the postconviction habeas petition at issue here, his third such petition, almost six years after the remittitur issued on direct appeal. Thus, Walsh's petition was untimely. *See* NRS 34.726(1). Moreover, Walsh's petition was successive under NRS 34.810(3) because Walsh previously filed a postconviction habeas petition that was denied on the merits. *See Walsh v. Director (Walsh II)*, No. 73540-COA, 2018 WL 3583267 (Nev. Ct. App. July 17, 2018) (Order of Affirmance). Walsh also filed a second postconviction habeas petition, which was denied as procedurally barred.

See Walsh v. State (Walsh III), No. 80794-COA, 2021 WL 1399847 (Nev. Ct. App. Apr. 12, 2021) (Order of Affirmance). And the current petition constituted an abuse of the writ to the extent that Walsh raised claims not previously litigated. *See* NRS 34.810(1)(b), (3). Accordingly, the petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (3), (4).

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). Walsh's first argument concerns an alleged violation of *Brady v. Maryland*, 373 U.S. 83 (1963). If proven, the *Brady* claim could demonstrate good cause and prejudice. *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (noting that the second and third components of a *Brady* violation parallel the showings of good cause and prejudice required when the claim is raised in a procedurally barred petition). Under *Brady*, the State is required to disclose evidence favorable to the defense when that evidence is material to guilt, punishment, or impeachment. *Mazzan v. Warden*, 116 Nev. 48, 66-67, 993 P.2d 25, 36-37 (2000). The three components of a *Brady* violation are (1) the evidence is favorable to the defendant; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) the evidence was material such that the defendant was prejudiced by the State's act of withholding the evidence. *Id.* at 67, 993 P.2d at 37. We review *Brady* claims de novo. *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 7-8 (2003).

Walsh argues the State failed to disclose a key witness's confidential informant agreement. Even assuming that the confidential informant agreement was favorable to Walsh and withheld by the State,

Walsh has not demonstrated materiality. Evidence is material only when there is a reasonable probability or possibility—depending on whether there was a specific request for the evidence—that the result of the trial would have been different. *Mazzan*, 116 Nev. at 74, 993 P.2d at 41. Walsh argues the confidential informant agreement was material not because of the information contained in the agreement itself, but because if trial counsel had the agreement, trial counsel would have investigated the witness's criminal activity. And Walsh argues this investigation would have led to information that would have discredited the testimony of the witness and the detective.

As the Court of Appeals determined in connection with Walsh's first habeas petition, however, Walsh failed to demonstrate a reasonable probability of a different outcome had trial counsel conducted such additional investigation. *Walsh II*, 2018 WL 3583267, at *3. That decision is the law of the case. *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (stating law of the case doctrine, under which "[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same" (internal quotation marks omitted)). And the "doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument." *Id.* at 316, 535 P.2d at 799. Further, the additional information Walsh describes would offer only minor impeachment value. Trial counsel knew the witness was a confidential informant and cross-examined the witness about being a confidential informant and the benefits the witness received, the witness's drug use, and the witness's criminal history. Trial counsel also cross-examined the detective about using the witness as a confidential informant. We are unpersuaded that additional cross-examination related to the witness's

criminal activities would have altered the outcome at trial. *See Wade v. State*, 115 Nev. 290, 296, 986 P.2d 438, 441-42 (1999) (finding no *Brady* violation where trial counsel conducted an effective cross-examination despite not receiving the complete confidential informant file). Thus, we conclude the *Brady* claim lacks merit and therefore does not establish good cause and prejudice to overcome the procedural bars. Accordingly, the district court did not err in denying the claim without conducting an evidentiary hearing.[1]

Second, Walsh asserts claims relating to the right to self-representation and ineffective assistance of counsel. Walsh argues he demonstrated good cause to overcome the procedural bars to raise these claims because he lacked counsel for his initial postconviction proceeding. Because Walsh was not entitled to the appointment of postconviction counsel, the lack of such counsel does not amount to good cause. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871 (2014) (explaining that NRS 34.750(1) "provides for the discretionary appointment of counsel to represent noncapital habeas petitioners"). Thus, the district court did not err in denying these claims without conducting an evidentiary hearing.

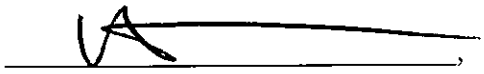
Finally, Walsh asks us to modify the sentence, noting that the district court expressed a willingness to do so if this court so directed. But this court has already denied Walsh's motion for a limited remand to allow the district court to modify Walsh's sentence. *Walsh v. State (Walsh IV)*, No. 88248 (Nev. Oct. 7, 2024) (Order Granting Motion for Extension of Time, Denying Motion for Limited Remand, and Regarding Briefing). And as noted in that order, changes in the law and the sentences given to

[1]In light of this conclusion, we need not reach the question of whether trial counsel received a copy of the confidential informant agreement.

defendants in other cases are not permissible reasons to modify a sentence. *See id.*; *see also Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (emphasizing that "a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment"). Therefore, we decline to modify Walsh's sentence and judgment of conviction.

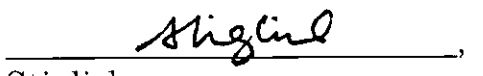
Having considered Walsh's arguments and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Herndon

_____, J.
Bell



_____, J.
Stiglich

cc: Hon. Kimberly A. Wanker, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk