

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MALIK TYRELL KENDRICK,
Appellant,
vs.
WILLIAM GITTERE, WARDEN, ELY
STATE PRISON; RONALD OLIVER,
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER; JAMES
DZURENDA, DIRECTOR, NEVADA
DEPARTMENT OF CORRECTIONS;
AND AARON FORD, NEVADA
ATTORNEY GENERAL,
Respondents.

No. 90367-COA

FILED

MAR 09 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Malik Tyrell Kendrick appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 18, 2024. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Kendrick filed his petition more than three years after the issuance of the remittitur on direct appeal on October 7, 2020. *See Kendrick v. State*, No. 78352, 2020 WL 2575745 (Nev. May 20, 2020) (Order of Affirmance). Thus, Kendrick's petition was untimely filed. *See* NRS 34.726(1). Moreover, Kendrick's petition was successive because he had previously filed a postconviction petition for 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 prior petition.¹ *See* NRS

¹*See Kendrick v. State*, No. 84823-COA, 2023 WL 2148860 (Nev. Ct. App. Feb. 21, 2023) (Order of Affirmance).

34.810(1)(b)(2); NRS 34.810(3). Kendrick'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). Application of the procedural bars is mandatory. *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

On appeal, Kendrick argues the district court erred by denying his claims as procedurally barred because he has good cause to overcome the procedural bars. Specifically, he alleges the ineffective assistance of postconviction counsel provides good cause to overcome the procedural bars. However, Kendrick did not have a statutory or constitutional right to postconviction habeas counsel in this case. *See Brown v. McDaniel*, 130 Nev. 565, 569 n.1, 331 P.3d 867, 870 n.1 (2014) (noting that petitioners who are sentenced to death have a statutory right to counsel under NRS 34.820(1)(a), while "the appointment of post-conviction counsel to represent noncapital petitioners is subject to the district court's discretion as provided in NRS 34.750(1)"). Thus, Kendrick was not entitled to the effective assistance of postconviction counsel, and "the ineffective assistance of post-conviction counsel . . . may not constitute 'good cause' to excuse procedural defaults." *Id.* at 569, 331 P.3d at 870. Kendrick urges this court to overrule *Brown*; however, "this court cannot overrule Nevada Supreme Court precedent." *Eivazi v. Eivazi*, 139 Nev. 408, 418 n.7, 537 P.3d 476, 487 n.7 (Ct. App. 2023). Thus, Kendrick fails to demonstrate good cause to

overcome the procedural bars on this basis. Accordingly, we conclude the district court did not err by denying Kendrick's postconviction petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

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