

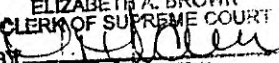
IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY RICHARD WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86406

FILED

MAY 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

Appellant Troy White was convicted of second-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, carrying a concealed deadly weapon, and five counts of child abuse, neglect, or endangerment. This court affirmed the judgment of conviction. *White v. State*, No. 68632, 2017 WL 1532729 (Nev. Apr. 26, 2017) (Order of Affirmance). In 2018, White filed a postconviction petition for a writ of habeas corpus. The Court of Appeals affirmed the district court's denial of that petition, *White v. State*, No. 82798-COA, 2022 WL 336506 (Nev. Ct. App. Feb. 3, 2022) (Order of Affirmance), and remittitur issued on February 28, 2022. On September 27, 2022, White filed a second petition raising collateral challenges to the conviction and sentence. The district court denied the petition as procedurally barred. White appeals, and we affirm.

As White concedes, the current petition is subject to multiple procedural bars. The petition was untimely, because it was filed over 5 years after remittitur issued from White's direct appeal. *See* NRS 34.726(1). The petition was also successive because White had previously filed a postconviction petition, and it constituted an abuse of the writ because

White raised claims new and different from those raised in the previous petition, which were therefore subject to waiver. *See* NRS 34.810(1)(b), (2).¹ Petitions that are untimely, successive, or an abuse of the writ are subject to dismissal absent a showing of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(1)(b), (3). 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).

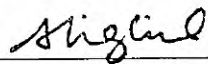
As good cause to overcome the procedural bars, White argues that first postconviction counsel provided ineffective assistance. This argument is precluded by our decision in *Brown v. McDaniel*, 130 Nev. 565, 331 P.3d 867 (2014). As a noncapital petitioner, White was not entitled to the appointment of postconviction counsel. *See id.* at 571, 331 P.3d at 871-72 (explaining that NRS 34.750(1) “provides for the discretionary appointment of counsel to represent noncapital habeas petitioners”). Because appointment of postconviction counsel was not mandated, White had no constitutional or statutory right to the effective assistance of that counsel. *See id.* at 569, 331 P.3d at 870. As we explained in *Brown*, “[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel.” *Id.* (quoting *McKague v. Whitley*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)). And we decline White’s invitation to reconsider our prior decision as White has not demonstrated that *Brown* was badly reasoned or unworkable. *See State v. Lloyd*, 129 Nev. 739, 750,

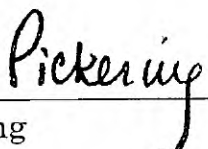
¹The Legislature recently made a technical amendment to NRS 34.810, which renumbered the subsections. A.B. 49, 82d Leg. (Nev. 2023). We use the numbering in effect when the district court denied White’s postconviction petition.

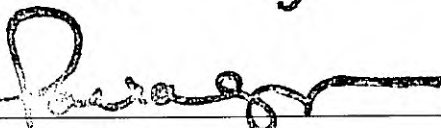
312 P.3d 467, 474 (2013) (“[W]hen governing decisions prove to be unworkable or are badly reasoned, they should be overruled.” (internal quotation marks omitted)).

Because “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and White failed to demonstrate any grounds to excuse those procedural default rules, the district court did not err in denying White’s petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

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