

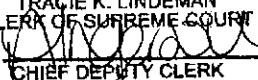
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIM BASS HOLDEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67970

**FILED**

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

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

Appellant Jim Bass Holden filed his petition on June 11, 2014, more than six years after issuance of the remittitur on direct appeal on November 13, 2007. *Holden v. State*, Docket No. 47698 (Order of Affirmance, October 17, 2007). Thus, Holden's petition was untimely filed. See NRS 34.726(1). Moreover, Holden's petition was successive because he had previously filed two postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>1</sup> See NRS

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<sup>1</sup>*Holden v. State*, Docket No. 65331 (Order of Affirmance, June 10, 2015); *Holden v. State*, Docket No. 61352 (Order of Affirmance, May 13, 2014).


34.810(1)(b)(2); NRS 34.810(2). Holden'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(3). Moreover, Holden was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


Holden argues he has good cause because his prior postconviction counsel was ineffective and Holden could not raise such a claim until the completion of his prior postconviction proceedings. Holden also argues the district court should have conducted an evidentiary hearing concerning his claims. However, Holden did not have a right to the effective assistance of postconviction counsel for this case. See *Crump v. Warden*, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 258 & n.5 (1997); see also *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 870 (2014) ("[T]here is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings"). As Holden did not have a right to the effective assistance of postconviction counsel, this claim does not provide good cause to overcome the procedural bars. See *Brown*, 130 Nev. at \_\_\_, 331 P.3d at 870 (explaining that postconviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of postconviction counsel was mandated by statute). Because Holden did not demonstrate good cause to overcome the procedural bars, the district court properly denied the petition without conducting an evidentiary hearing. See *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

In addition, Holden did not overcome the presumption of prejudice against the State. See NRS 34.800(2). Accordingly, Holden is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Carolyn Ellsworth, District Judge  
Law Office of Kristina Wildeveld  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk