

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOYLE DOLEN LANCASTER,
Appellant,
vs.
I. BACA, WARDEN; AND THE STATE
OF NEVADA,
Respondents.

No. 69707

FILED

NOV 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
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. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Appellant Doyle Lancaster filed his petition on May 8, 2013, nearly ten years after entry of the judgment of conviction on July 2, 2003, and more than three years after issuance of the remittitur on November 20, 2009, in his appeal from the order denying his postconviction petition for a writ of habeas corpus filed pursuant to *Lozada v. State*, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994).¹ Thus, Lancaster's petition was untimely filed. See NRS 34.726(1). Moreover, Lancaster's petition was successive because he had previously filed two postconviction petitions for a writ of

¹*Lancaster v. Warden*, Docket No. 51446 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, October 26, 2009).

habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(2). Lancaster's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). To determine if Lancaster can establish actual prejudice sufficient to overcome the procedural bars, we must consider his underlying claims to ascertain whether any of his alleged claims of error "worked to his actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions." *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

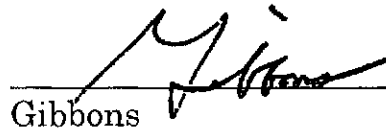
Lancaster claimed he has good cause and demonstrated actual prejudice to overcome the procedural bars because counsel never communicated a plea offer to him and had counsel communicated the offer, he would have accepted the offer.

Lancaster failed to demonstrate good cause and actual prejudice. The district court held an evidentiary hearing on Lancaster's underlying claim that counsel did not inform him of a plea offer. The district court found counsel testified he communicated the offer to Lancaster; Lancaster rejected the offer and ultimately fired counsel. The district court found counsel's testimony to be credible and counsel's testimony was supported by the fee dispute documentation provided by

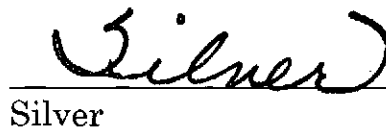
²*Lancaster v. Warden*, Docket No. 62314 (Order of Affirmance, October 16, 2013); *Lancaster v. State*, Docket No. 49844 (Order of Affirmance, February 8, 2008).

Lancaster. The record supports the decision of the district court, 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.
Gibbons

 J.
Tao

 J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk