

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLEN STANISLOUIS HEUSNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70381

**FILED**

JAN 19 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellant Allen Stanislaus Heusner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Heusner filed his petition on December 3, 2015, more than five years after issuance of the remittitur on direct appeal on May 28, 2010. *Heusner v. State*, Docket No. 52023 (Order of Affirmance, May 3, 2010). Thus, Heusner's petition was untimely filed. See NRS 34.726(1). Moreover, Heusner's petition was successive because he had previously filed a postconviction petition 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 petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Heusner's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1);

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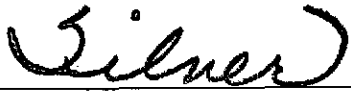
<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

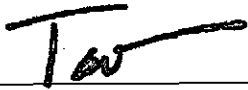
<sup>2</sup>*Heusner v. State*, Docket No. 62055 (Order of Affirmance, November 14, 2013).

NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Heusner was required to overcome the rebuttable presumption of prejudice. *See* NRS 34.800(2).

Heusner argues the district court erred in concluding his petition was procedurally barred because the State failed to refute his assertion that justices of the Nevada Supreme Court unconstitutionally participated in the 1951 Statute Revision Commission. However, Heusner, as the petitioner, had the burden of pleading and proving facts to demonstrate good cause to excuse the delay. *See State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Claims stemming from the 1951 Statute Revision Commission were reasonably available to be raised in a timely petition and Heusner did not explain why he did not raise this in his prior petition. *See Hathaway v. State*, 119 Nev. 248, 252-53 71 P.3d 503, 506 (2003). Because Heusner did not demonstrate an impediment external to the defense prevented him from raising this claim in a timely manner, the district court properly concluded this claim was procedurally barred. *See Rubio v. State*, 124 Nev. 1032, 1046 n. 53, 194 P.3d 1224, 1234 n.53 (2008) ("The court may also reject a substantive post-conviction claim without an evidentiary hearing when the claim is procedurally barred and the defendant cannot overcome the procedural bar."). Therefore, the district court did not err in denying the petition and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Carolyn Ellsworth, District Judge  
Allen Stanislouis Heusner  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk