

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL BENARD WADSWORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73164

FILED

APR 11 2018

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

ORDER OF AFFIRMANCE

Michael Benard Wadsworth appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 31, 2016, and supplemental petition filed on August 29, 2016. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.


Wadsworth filed his petition nearly eight years after issuance of the remittitur on direct appeal on July 1, 2008. *See Wadsworth v. State*, Docket No. 48071 (Order of Affirmance, June 4, 2008). Wadsworth's petition was therefore untimely filed. *See* NRS 34.726(1). Wadsworth's petition was also successive and an abuse of the writ.¹ NRS 34.810(1)(b)(2); NRS 34.810(2). Wadsworth's petition was therefore 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).

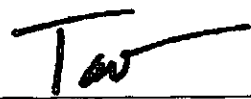
Wadsworth contends the failures of trial, appellate, and postconviction counsel to recognize that a jury instruction contained an


¹*See Wadsworth v. Warden*, Docket No. 58811 (Order of Affirmance, November 15, 2012).

incorrect statement of law constitute good cause to excuse his procedural bars. Claims of ineffective assistance of trial or appellate counsel cannot be good cause where, as here, they are procedurally barred. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (“[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.”). And the ineffective assistance of postconviction counsel cannot be good cause where, as here, the appointment of counsel was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014).² We therefore conclude the district court did not err in denying Wadsworth’s petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²Even assuming we had authority to entertain Wadsworth’s request that we revisit or overrule *Brown*, we conclude he has failed to demonstrate any basis for doing so.

cc: Hon. Connie J. Steinheimer, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk