

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FABIEN PIERRE HUNT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73787

FILED

JUN 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Fabien Pierre Hunt appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 9, 2014.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Hunt filed his petition more than four years after entry of the judgment of conviction on May 21, 2009. No direct appeal was taken. Hunt's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

Hunt first contends his low intelligence provides good cause to excuse the delay. In affirming the denial of Hunt's first postconviction petition for a writ of habeas corpus as untimely, the Nevada Supreme Court

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

held Hunt's low intelligence did not excuse the delay. *See Hunt v. State*, Docket No. 60400 (Order of Affirmance, September 12, 2012). That ruling is the law of the case, which "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).


Hunt also contends he received ineffective assistance from counsel appointed to represent him on his first petition. However, Hunt was not entitled to the appointment of postconviction counsel and thus was not entitled to the effective assistance of postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, any defect in postconviction counsel's representation cannot constitute good cause. *Id.*


For the foregoing reasons, we conclude the district court did not err by denying Hunt's petition as procedurally barred² without first

²The district court wrongly concluded Hunt's petition was successive. Because his prior petition was not decided on the merits, any subsequent petition cannot be successive. *See* NRS 34.810(2) (providing for dismissal of successive petitions if "the prior determination was on the merits"). We nevertheless affirm the district court's decision for the reasons stated above. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Fabien Pierre Hunt
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).