


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HERIBERTO TORIBIO-RUIZ,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 77256-COA

FILED

JUL 09 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Heriberto Toribio-Ruiz appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Toribio-Ruiz filed his petition on June 21, 2018, almost 11 years after issuance of the remittitur on direct appeal on July 3, 2007. *Toribio-Ruiz v. State*, Docket No. 45823 (Order of Affirmance, June 7, 2007). Thus, Toribio-Ruiz' petition was untimely filed. See NRS 34.726(1). Moreover, Toribio-Ruiz' 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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Toribio-

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


²*Toribio-Ruiz v. State*, Docket No. 63567 (Order of Affirmance, July 23, 2014).

Ruiz' 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).

Toribio-Ruiz claimed he had good cause due to the ineffective assistance of his postconviction counsel during the proceedings for his prior petition. Toribio-Ruiz' claim did not demonstrate good cause because the appointment of postconviction counsel was not statutorily or constitutionally required in this case and "the ineffectiveness of counsel representing a noncapital petitioner does not constitute good cause to excuse a state procedural bar." *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Therefore, we conclude the district court did not err by denying Toribio-Ruiz' petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Heriberto Toribio-Ruiz
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk