

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ROSS BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70918

FILED

MAY 16 2017

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

ORDER OF AFFIRMANCE

Anthony Ross Black appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Black argues the district court erred in denying his petition as procedurally barred. Black filed his petition on May 6, 2016, almost 16 years after issuance of the remittitur on direct appeal on June 20, 2000. *Black v. State*, Docket No. 33753 (Order Dismissing Appeal, May 25, 2000). Thus, Black's petition was untimely filed. See NRS 34.726(1). Moreover, Black's petition was successive because he had previously filed several postconviction petitions 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 petitions.² See NRS 34.810(1)(b)(2); NRS

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

²*Black v. State*, Docket No. 66882 (Order of Affirmance, February 17, 2016); *Black v. State*, Docket No. 64552 (Order of Affirmance, June 11, 2014); *Black v. State*, Docket No. 44472 (Order of Affirmance, April 27, 2014).
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34.810(2). Black's 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). Moreover, because the State specifically pleaded laches, Black was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

First, Black appeared to assert the procedural bars should not apply to his petition because they improperly prevent his claims from being considered on the merits. However, the Nevada Supreme Court has already concluded the procedural bars reasonably regulate the right to seek postconviction relief. See *Pellegrini v. State*, 117 Nev. 860, 878, 34 P.3d 519, 531 (2001).

Second, Black argued he had good cause due to the ineffective assistance of postconviction counsel. However, ineffective assistance of postconviction counsel was not good cause in the instant case because the appointment of counsel was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014); *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997).

Third, Black appeared to argue he had good cause due to the ineffective assistance of appellate counsel for his direct appeal. However, Black's claims of ineffective assistance of appellate counsel were procedurally barred because they were reasonably available to be raised in Black's first petition, and therefore, cannot constitute cause for additional

... continued

2005); *Black v. State*, Docket No. 38780 (Order of Affirmance, May 7, 2003).

procedurally barred claims. *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 barred.”).

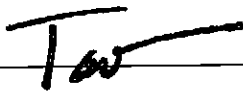
Fourth, Black asserted the State’s conduct during the pretrial, trial, and sentencing proceedings provided good cause. However, these claims were reasonably available to be raised in Black’s first petition, and Black did not provide a legal excuse as to why he did not raise these issues at an earlier time. *See id.* at 252-53, 71 P.3d at 506.

Fifth, Black claimed he had good cause because he does not have physical access to the prison law library and has to rely upon a paging system for legal research. Black failed to demonstrate lack of access to the law library deprived him of meaningful access to the courts. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996) (“an inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense”). Black filed previous postconviction petitions for a writ of habeas corpus and additional documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to the prison law library. *See id.* (a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.”). Moreover, Black did not demonstrate any of his claims could not have been raised in his prior petitions, and therefore, he failed to demonstrate official interference caused him to be unable to comply with the procedural bars. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

Sixth, Black argues the district court lacked jurisdiction to consider his petition. Black acknowledges he did not raise this claim in the district court, and for that reason, we decline to consider it in the first instance on appeal.³ See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Accordingly, we conclude the district court properly denied Black's petition as procedurally barred and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Anthony Ross Black
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents Black has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Black has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

⁴The Honorable Abbi Silver, Chief Judge, did not participate in the decision in this matter.