

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JORGE VAZQUEZ, A/K/A JORGE
VICTORINOVAZQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71799

FILED

OCT 12 2017

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

ORDER OF AFFIRMANCE

Jorge Vazquez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 10, 2016, and a supplemental petition filed on September 12, 2016.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Vazquez claims the district court erred in denying his petition as procedurally barred. Vazquez filed his petition more than two years after issuance of the remittitur on direct appeal on December 30, 2013, and nearly two years after entry of the amended judgment of conviction on February 10, 2014.² *See Vazquez v. State*, Docket No. 62269 (Order Affirming in Part, Reversing in Part, and Remanding, December 3, 2013). Vazquez' petition was therefore untimely filed. *See* NRS 34.726(1); *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). His petition was also successive insofar as some of his claims could have been raised in his direct appeal. *See* NRS 34.810(1)(b)(2). Vazquez' petition was therefore

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


²No direct appeal was taken from the amended judgment of conviction.


procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b).

Vazquez claimed he had good cause because he had been diligently pursuing his postconviction remedies, including federal habeas relief, and he needed to exhaust his state remedies to proceed in federal court. However, filing a motion to modify and/or correct an illegal sentence and pursuing federal claims are not good cause because Vazquez' claims were reasonably available to be raised in a timely petition or on direct appeal. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Colley v. State*, 105 Nev. 235-36, 773 P.2d 1229, 1229-30 (1989), *abrogated by statute on other grounds as recognized by State v. Huebler*, 128 Nev. 192, 197-98 n.2, 275 P.3d 91, 95 n.2 (2012).

To the extent Vazquez suggests the abandonment of counsel constituted good cause, he failed to indicate the circumstances of the alleged abandonment or how it prevented him from raising such claims before. Such bare claims cannot afford relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We therefore conclude the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³Because Vazquez has not overcome the procedural bars to his petition, we decline to reach the merits of his claims raised in the instant appeal.

cc: Hon. Carolyn Ellsworth, District Judge
Jorge Vazquez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk