

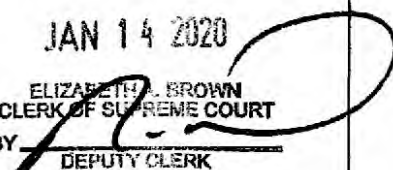
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES EUGENE HERMANSON,
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

No. 78893-COA

FILED

JAN 14 2020

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

James Eugene Hermanson appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Hermanson filed his petition on January 9, 2019, more than five years after entry of the judgment of conviction on July 3, 2013.¹ Thus, Hermanson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hermanson's 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(2). Hermanson's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

In his petition, Hermanson contended it was improper for him to be sentenced prior to the completion of a presentence investigation report

¹Hermanson did not pursue a direct appeal.

²*Hermanson v. State*, Docket No. 68832-COA (Order of Affirmance, January 19, 2017).

20-01825

(PSI). Hermanson also claimed his trial-level counsel had a conflict of interest. Both of these issues were reasonably available to be raised in a timely-filed petition. Moreover, Hermanson acknowledged the district court had previously addressed his claim concerning the lack of a PSI. Hermanson did not demonstrate an impediment external to the defense prevented him from raising these claims in a timely manner and, therefore, he failed to demonstrate good cause to overcome the procedural bars. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Accordingly, the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Leon Aberasturi, District Judge
James Eugene Hermanson
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk