

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT LINZY BELLON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79266-COA

FILED

MAY 15 2020

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

ORDER OF AFFIRMANCE

Robert Linzy Bellon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

District Court Case Number 99C156589

In his December 28, 2018, petition, Bellon contended he was entitled to have additional presentence credits applied toward his sentence stemming from a conviction for battery with the use of a deadly weapon resulting in substantial bodily harm. A postconviction petition for a writ of habeas corpus is not available to challenge a judgment of conviction when the petitioner is no longer in custody pursuant to that judgment of conviction when the petition is filed. *See Nev. Const. art. 6, § 6(1); NRS 34.724(1); Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999). The district court found that Bellon had already expired his sentence and was no longer in custody pursuant to the judgment of conviction entered in district court case number 99C156589. The record supports the district court's findings, and we conclude the district court properly found a postconviction petition for a writ of habeas corpus is not the proper vehicle for Bellon to challenge this judgement of conviction.

District Court Case Number 99C157818

Bellon filed his petition on December 28, 2018, more than ten years after issuance of the remittitur on direct appeal on February 19, 2008. *Bellon v. State*, Docket No. 47798 (Order of Affirmance, October 17, 2007). Thus, Bellon's petition was untimely filed. See NRS 34.726(1). Moreover, Bellon'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.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Bellon'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).

First, Bellon contended he had good cause to assert he was entitled to additional presentence credits because he recently found a case-summary document that discussed those credits. However, any claims concerning Bellon's presentence credits were reasonably available to be raised in a timely-filed petition, and Bellon did not demonstrate an impediment external to the defense prevented him from doing so. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

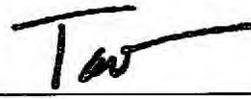
Second, Bellon claimed he had good cause based upon the application of *State v. Boston*, 131 Nev. 981, 363 P.3d 453 (2015). However, this court previously held the *Boston* opinion did not constitute good cause. *Bellon v. State*, Docket No. 76755-COA (Order of Affirmance, April 18,

¹*Bellon v. State*, Docket No. 76755-COA (Order of Affirmance, April 18, 2019); *Bellon v. Warden*, Docket No. 61913 (Order of Affirmance, January 16, 2014); *Bellon v. State*, Docket No. 57223 (Order of Affirmance, April 11, 2012).

2019). This holding constitutes the law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Robert Linzy Bellon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²Bellon also argued the Nevada Department of Corrections has improperly calculated his parole eligibility date. However, the district court properly resolved only the portion of the petition challenging the judgment of conviction because a challenge to the computation of time served cannot be raised in a postconviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. *See* NRS 34.738(3). Bellon may separately file a postconviction petition for a writ of habeas corpus challenging the computation of time served in the county in which he is incarcerated. *See* NRS 34.724(1); NRS 34.730(2); NRS 34.738(1).