


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78193-COA

FILED

JUN 05 2013

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Alfred P. Centofanti, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Centofanti filed his petition on April 24, 2012, more than five years after issuance of the remittitur on direct appeal on March 27, 2007. *See Centofanti, III v. State*, Docket No. 44984 (Order of Affirmance, December 27, 2006). Thus, Centofanti's petition was untimely filed. *See* NRS 34.726(1). Moreover, Centofanti'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.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Centofanti'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).

¹*Centofanti, III v State*, Docket No. 58562 (Order of Affirmance, June 3, 2013).

Centofanti claimed he had good cause to overcome the procedural bars because his counsel for the first postconviction proceedings had a conflict of interest as he represented Centofanti on direct appeal. The district court found Centofanti's conflict-of-interest claim provided good cause to overcome the procedural bars and denied his claims on the merits.

A claim of ineffective assistance of counsel may provide good cause but only where there is a right to counsel (statutory or constitutional) and the right to the effective assistance of counsel, *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 165 n.5, 912 P.2d 255, 258 n.5 (1996), and only where the good cause claim explains the procedural defects and is not itself procedurally barred, *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

A conflict-of-interest claim is a claim of ineffective assistance because counsel's breach of the duty of loyalty gives rise to a claim that counsel was ineffective due to a conflict of interest. See *Strickland v. Washington*, 486 U.S. 668, 688, 692 (1984) (framing a conflict-of-interest claim as a claim that the defendant was denied the effective assistance of counsel). A conflict-of-interest claim thus requires there be a right to counsel and a right to the effective assistance of counsel. In Nevada, there is no constitutional or statutory right to postconviction counsel in non-capital cases and thus no right to the effective assistance of postconviction counsel in such cases. See *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Because Centofanti did not have a constitutional or statutory right to postconviction counsel, he had no right to the effective assistance of postconviction counsel. Accordingly, Centofanti's assertion of postconviction counsel's conflict of interest cannot provide good cause to overcome the procedural bars. Therefore, the district court erred in finding

Centofanti had good cause to overcome the procedural bars. Nevertheless, because the district court reached the correct result by denying the petition, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Next, Centofanti argues the district court erred by denying the petition without conducting an evidentiary hearing concerning the claims his postconviction counsel did not raise during the prior postconviction proceedings. Centofanti also contends the district court erred by declining to permit him to conduct discovery. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Because Centofanti did not demonstrate good cause, he fails to demonstrate the district court erred by declining to conduct an evidentiary hearing concerning his procedurally-barred claims. In addition, Centofanti fails to demonstrate he was entitled to conduct discovery. *See* NRS 34.780(2). Therefore, Centofanti is not entitled to relief based upon these claims.

Finally, Centofanti argues that the district court's order was improper as the order was prepared by the State without allowing him an opportunity to review and respond to it. As discussed previously, Centofanti failed to demonstrate he had good cause to overcome the procedural bars and the district court properly denied relief. Centofanti does not demonstrate any failure to permit him to review and respond to the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. Therefore, even assuming the district

court erred by not allowing Centofanti the opportunity to review and respond to the proposed order, *cf. Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007) (stating that when a district court requests a party to prepare a proposed order, the court must ensure that the other parties are aware of the request and given the opportunity to respond to the proposed order), we conclude any error was harmless and Centofanti fails to demonstrate he suffered prejudice, *see* NRS 178.598 (stating that “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded”). Therefore, Centofanti is not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Alfred P. Centofanti, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk