

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY DEWANE BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80128-COA

ANTHONY DEWANE BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80129-COA

FILED

SEP 04 2020

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

ORDER OF AFFIRMANCE

Anthony Dewane Bailey appeals from a single district court order filed in district court case numbers 09C253437 (Docket No. 80128) and A-19-797819-W (Docket No. 80129) that denies a single postconviction petition for a writ of habeas corpus filed July 1, 2019. The cases were consolidated on appeal. *See* NRAP 3(b). Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Bailey's petition was untimely because it was filed more than two years after the remittitur on direct appeal was issued on October 25, 2016,¹ *see* NRS 34.726(1), and it was successive because Bailey had previously filed a postconviction petition for a writ of habeas corpus and

¹*See Bailey v. State*, Docket No. 67108 (Order of Affirmance, September 30, 2016).

that petition was decided on the merits,² *see* NRS 34.810(2). Therefore, Bailey's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

First, Bailey claimed he had good cause because appellate counsel was ineffective for not knowing a well-established law declared the habitual criminal statute unconstitutional. However, the district court found that Bailey failed to show good cause because he did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely manner and he did not explain or justify the delay in raising his claim. The record supports the district court's findings, and we conclude the district court did not err by rejecting this good-cause claim. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Second, Bailey claimed he had good cause because he was placed in administrative segregation from January 26, 2016, to January 3, 2017, and thereby deprived of physical access to the prison law library. However, the district court found that even if Bailey had been placed in administrative segregation for a period of time, he failed to provide an excuse for his failure to file the petition between January 3, 2017, and October 31, 2017, when the petition could have still been filed in a timely manner. The record supports the district court's findings, and we conclude the district court did not err by rejecting this good-cause claim. *See id.*

Third, Bailey appears to claim the procedural bars do not apply to his petition because it was filed pursuant to NRS 34.360. However, the district court found that Bailey was challenging his habitual criminal sentence and that a petition filed pursuant to NRS 34.360 could not

²*See Bailey v. State*, Docket No. 75489-COA (Order of Affirmance, April 16, 2019).

challenge the validity of a judgment of conviction or sentence. The record supports the district court's findings, and we conclude the district court did not err by rejecting this claim. *See* NRS 34.724(2)(b).

We conclude the district court properly denied Bailey's procedurally barred postconviction habeas petition, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Anthony Dewane Bailey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³To the extent Bailey claims in his notices of appeal that the State did not file a timely response to his habeas petitions and he was not provided with an opportunity to reply to the State's answer, the record demonstrates that the State's response was timely filed, the response was served on Bailey, and Bailey made no attempt to file a reply. Therefore, Bailey's claim is belied by the record and he is not entitled to relief on this claim.

The Honorable Jerome T. Tao did not participate in the decision in this matter.