

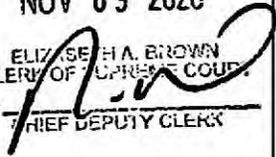
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORNELIUS ALFRED GAINES, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79520-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Cornelius Alfred Gaines, 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; Jerry A. Wiese, Judge.

First, Gaines argues the district court erred by denying his petition without conducting an evidentiary hearing. Gaines filed his petition on May 10, 2019, more than four years after issuance of the remittitur on direct appeal on June 24, 2014. *See Gaines v. State*, Docket No. 59892 (Order of Affirmance, May 30, 2014). Thus, Gaines's petition was untimely filed. *See* NRS 34.726(1). Moreover, Gaines's petition was successive because his conviction was the result of a trial and his claims could have been presented on direct appeal or in his previous petition.¹ *See* NRS 34.810(1)(b)(2). Gaines's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b). To warrant an evidentiary hearing on a good-cause claim, the petitioner must raise claims supported by specific factual allegations that

¹*Gaines v. State*, Docket No. 69321-COA (Order of Affirmance, January 19, 2017).

20-40797

are not belied by the record and, if true, would entitle him to relief. See *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

Gaines asserted he had good cause to excuse the procedural defects because official interference prevented the timely filing of his 2015 petition. Gaines raised this good-cause claim in his prior petition and this court affirmed the district court's decision to deny relief. *Gaines v. State*, Docket No. 69321-COA (Order of Affirmance, January 19, 2017). As Gaines already raised this good-cause claim and it was rejected by this court, the doctrine of the law of the case prevents further consideration of this claim, see *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975), and Gaines did not provide a compelling reason to revisit this court's decision, see *Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007). Therefore, the district court did not err by denying this good-cause claim and denying the petition as procedurally barred without conducting an evidentiary hearing.²

Second, Gaines argues that the district court's order was improper as it was prepared by the State without allowing him an opportunity to review and respond to it. Gaines does not demonstrate that 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

²Gaines also argues the district court erred by finding this petition was procedurally barred pursuant to NRS 34.810(2). We conclude the district court should not have found the petition was procedurally barred pursuant to NRS 34.810(2), because Gaines's prior petition was not decided on the merits. 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).

allowing Gaines 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 Gaines fails to demonstrate he suffered prejudice, *see* NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, Gaines 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: Hon. Jerry A. Wiese, District Judge
Cornelius Alfred Gaines, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk