

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGEL TORRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81614-COA

**FILED**

MAR 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Angel Torres appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Torres argues the district court erred by denying his October 11, 2019, petition as procedurally barred. Torres filed his petition almost five years after issuance of the remittitur on direct appeal on November 10, 2014. *Torres v. State*, Docket No. 63983 (Order of Affirmance, October 15, 2014). Thus, Torres's petition was untimely filed. See NRS 34.726(1). Moreover, Torres's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and different from those raised in several of his previous petitions.<sup>1</sup> See NRS

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<sup>1</sup>*Torres v. State*, Docket No. 67806 (Order of Affirmance, September 16, 2015). Torres also filed postconviction petitions for a writ of habeas corpus in the district court on July 27, 2018, and April 15, 2019, but Torres did not appeal from the orders denying those petitions.

34.810(2). Torres's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

First, Torres appeared to argue he had good cause because his 2014 petition was improperly denied as procedurally barred. However, claims stemming from the proceedings concerning Torres's 2014 petition were reasonably available to be raised within one year after the issuance of the remittitur on appeal from the order denying that petition, and Torres did not explain his entire delay in raising those claims. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available). Therefore, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Second, Torres argued he had good cause because he is housed in protective custody at the prison and, as a result, has limited access to the prison law library. "[A]n inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense." *See Lewis v. Casey*, 518 U.S. 343, 351 (1996). Rather, a prisoner must "demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim." *See id.* Torres did not identify any information he was unable to obtain due to the limitations of the prison law library and did not explain how a lack of access to the law library caused his entire delay.

Accordingly, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Third, Torres appeared to argue he had good cause because the State withheld exculpatory, material evidence regarding the victim's medical records in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). A valid *Brady* claim can constitute good cause and prejudice sufficient to excuse the procedural bars. *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (“[P]roving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice.”). The record demonstrates that Torres's trial-level counsel acknowledged that the State disclosed this information. Torres thus did not meet his burden to plead and prove specific facts to establish that the State actually withheld exculpatory evidence. *See id.* Accordingly, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Next, Torres appears to argue on appeal that the district court erred by failing to consider good-cause claims that he raised in an emergency motion for reconsideration. Torres appears to contend the district court should have allowed him to raise additional claims in that motion because he only had five pages of space in his postconviction petition with which to discuss his good-cause claims. The district court has the discretion to allow a petitioner to file supplemental pleadings, *see* NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006), but has no obligation to permit a petitioner to raise issues that had not been raised in an appropriately filed pleading, *see Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006). Here, the district court did not

grant Torres permission to file any additional documents, and Torres does not demonstrate the district court abused its discretion in this regard. Therefore, we conclude Torres is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Eric Johnson, District Judge  
Angel Torres  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>The Honorable Jerome T. Tao, Judge, did not participate in the decision in this matter.