

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE OSCAR ROBLEDONORIEGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81640-COA

FILED

APR 16 2021

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

ORDER OF AFFIRMANCE

Jose Oscar Robledo-Noriega appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Robledo-Noriega filed his petition on July 24, 2020, more than ten years after entry of the judgment of conviction on September 22, 2009.² Thus, Robledo-Noriega's petition was untimely filed. *See* NRS 34.726(1). Moreover, Robledo-Noriega's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ *See* NRS 34.810(2). Robledo-Noriega's petition was procedurally barred

¹Robledo-Noriega filed a "First Amendment petition for writ of habeas corpus." Robledo-Noriega challenged the validity of his judgment of conviction. Due to the nature of the claims raised, the district court properly construed the petition as a postconviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(b) (stating a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction).

²Robledo-Noriega did not pursue a direct appeal.

³*Robledo-Noriega v. State*, Docket No. 76661-COA (Order of Affirmance, May 21, 2019).

absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

First, Robledo-Noriega appeared to argue that the procedural bars did not apply to his petition because he is permitted to request additional presentence credits at any time. However, Robledo-Noriega's request for additional presentence credits was reasonably available to be raised in a timely-filed petition, and he did not attempt to explain his delay in raising such a claim. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, Robledo-Noriega was not entitled to relief based on this claim.

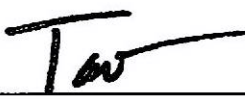
Second, Robledo-Noriega appeared to argue he had good cause because the State withheld exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Robledo-Noriega contended the victim may have contracted a sexually transmitted disease from her mother during birth and the State should have conducted an investigation into that issue. Robledo-Noriega also appeared to assert the State withheld an interview conducted with the victim where she stated that he did not improperly touch her. 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.").

In his petition, Robledo-Noriega did not allege that the State withheld exculpatory evidence regarding a sexually transmitted disease but rather alleged the State improperly failed to conduct a thorough investigation concerning that issue. In addition, the record demonstrated that the State did not withhold information from an interview with the

victim. Robledo-Noriega's counsel stated during the preliminary hearing that he had a 30-page transcript of that interview, and counsel presented information concerning the interview to the justice court during that hearing. Robledo-Noriega thus did not meet his burden to plead and prove specific facts to establish good cause. *See id.* Accordingly, we conclude the district court did not err by dismissing the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Jose Oscar Robledo-Noriega
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk