

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,  
A/K/A AND STEVEN SAMUEL  
JALBERT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82230-COA

**FILED**

**JUN 17 2021**

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

*ORDER OF AFFIRMANCE*

Steven Samuel Braunstein appeals from orders of the district court denying postconviction petitions for a writ of habeas corpus filed on June 29, 2018, and May 19, 2020. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge; Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Braunstein argues the district court erred by denying his petitions as procedurally barred without first conducting an evidentiary hearing. 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).

The remittitur from Braunstein's direct appeal<sup>1</sup> was filed on August 4, 2005, *see Braunstein v. State*, Docket No. 43404 (Order Affirming in Part, Reversing in Part and Remanding, July 1, 2005), and an amended judgment of conviction was entered on August 23, 2005. Braunstein's June 2018 petition was filed more than 12 years later, and his May 2020 petition was filed more than 14 years later. Thus, Braunstein's petitions were untimely filed. *See* NRS 34.726(1). Moreover, they were successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and they constituted an abuse of the writ as he raised claims new and different from those raised in the prior petition.<sup>2</sup> *See* NRS 34.810(2). Braunstein's petitions were procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches for the June 2018 petition, Braunstein was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Braunstein contended that he was entitled to additional presentence credits and asserted that the procedural bars did not apply because he can raise such claims at any time. However, "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Braunstein did not demonstrate an

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<sup>1</sup>The direct appeal was filed pursuant to *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>2</sup>*Braunstein v. State*, Docket No. 43404 (Order Affirming in Part, Reversing in Part and Remanding, July 1, 2005).

impediment external to the defense prevented him from raising his claims in a timely filed petition, *see Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

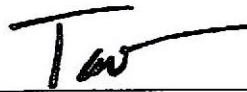
Second, Braunstein appeared to contend that the procedural bars did not apply because the district court entered an amended judgment of conviction removing the imposition of restitution and, therefore, his conviction was not final. The Nevada Supreme Court has held “that a judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment.” *Whitehead v. State*, 128 Nev. 259, 263, 285 P.3d 1053, 1055 (2012). Because the district court amended the judgment of conviction to rescind the imposition of restitution, it clearly did not impose a restitution obligation without specifying its final terms. Moreover, claims stemming from the proceedings concerning the amended judgment of conviction were reasonably available to be raised within one year of entry of the amended judgment, and Braunstein did not explain his delay in raising such a claim. *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.

Next, Braunstein did not overcome the presumption of prejudice to the State concerning his June 2018 petition. *See* NRS 34.800(2). Therefore, Braunstein is not entitled to relief and we conclude the district court did not err by denying the petitions as procedurally barred.

Finally, Braunstein argues on appeal that the district court erred by denying the petitions without appointing postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Braunstein's petitions were procedurally barred pursuant to NRS 34.810(2). Because the petitions were subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by denying the petitions without appointing postconviction counsel. Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>3</sup>

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

  
\_\_\_\_\_, J.  
Tao

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

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<sup>3</sup>Braunstein also appears to argue that the district court erred by declining to address his assertion that the Nevada Department of Corrections improperly calculated his work credits. However, a challenge to the computation of time served cannot be raised in a postconviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. *See* NRS 34.738(3). Braunstein may separately file a postconviction petition for a writ of habeas corpus challenging the computation of time served in the county in which he is incarcerated. *See* NRS 34.724(1); NRS 34.730(2); NRS 34.738(1).

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 23  
Hon. Joseph T. Bonaventure, Senior Judge  
Steven Samuel Braunstein  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk