

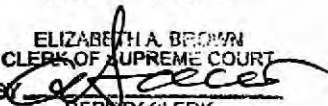
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82882-COA

FILED

NOV 24 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Donald Taylor appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 9, 2021. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Taylor filed his petition more than four years after issuance of the remittitur on direct appeal on August 8, 2016. *See Taylor v. State*, 132 Nev. 309, 371 P.3d 1036 (2016). Thus, Taylor's petition was untimely filed. *See* NRS 34.726(1). Moreover, Taylor'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 his previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Taylor's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

¹*See Taylor v. State*, No. 79218, 2020 WL 5652414 (Nev. Sep. 18, 2020) (Order of Affirmance).

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Relying on *Martinez v. Ryan*, 566 U.S. 1 (2012), Taylor claimed that ineffective assistance of postconviction counsel excused his procedural defects. Because the appointment of counsel in the prior postconviction proceeding was not statutorily or constitutionally required, see *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996), Taylor was not entitled to the effective assistance of postconviction counsel, see *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Further, the Nevada Supreme Court has held that *Martinez* does not apply to Nevada's statutory postconviction procedures. See *id.* at 571, 331 P.3d at 871-872. Thus, Taylor's claim did not provide good cause to overcome the procedural bars. Therefore, we conclude the district court did not err by denying the petition as procedurally barred.²

Next, Taylor requested the appointment of 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. Here, the district court found the petition was procedurally barred pursuant to NRS 34.810(2) and declined to appoint counsel. Because the petition was subject to summary dismissal, see NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel.

²To the extent Taylor claimed he had good cause because he failed to exhaust his claims for federal purposes, exhaustion of state remedies in order to seek federal review is insufficient to demonstrate good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *superseded by statute on other grounds as stated in State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012).

Finally, Taylor claimed that the district court should have conducted an evidentiary hearing concerning the merits of his claims. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Taylor did not demonstrate good cause sufficient to overcome application of the procedural bars, he failed to demonstrate the district court should have conducted an evidentiary hearing concerning his procedurally barred claims. *Id.* at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Monica Trujillo, District Judge
Donald Taylor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk