

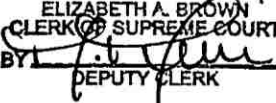
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMIEN ALEXANDER PHILLIPS,  
A/K/A TRAVIS ALEXANDER PHILLIPS,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS,  
Respondent.

No. 84115-COA

FILED

NOV 09 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Damien Alexander Phillips appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 13, 2021. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Phillips filed his petition more than one year after issuance of the remittitur on direct appeal on April 14, 2020. *See Phillips v. State*, No. 78270, 2020 WL 1358393 (Nev. Mar. 18, 2020) (Order of Affirmance). Thus, Phillips' petition was untimely filed. *See* NRS 34.726(1). Moreover, Phillips' 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.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Phillips' petition was procedurally barred

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<sup>1</sup>Phillips filed a postconviction petition for a writ of habeas corpus on March 30, 2021, which was denied on the merits by the district court. Phillips did not appeal from the denial of that petition.

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

Phillips failed to address the procedural bars in his petition below, nor does he make any argument regarding them on appeal. Therefore, we conclude that Phillips fails to demonstrate he is entitled to relief. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (holding that application of the procedural bars is mandatory). Accordingly, we

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

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

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

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

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<sup>2</sup>In denying Phillips' petition below, the district court adopted its order denying Phillips' previous petition. The district court's previous order denied Phillips' first, timely petition on the merits. Because the application of the procedural bars is mandatory in this case, *see id.*, we conclude the district court erred by denying the instant petition on the merits. Nevertheless, because the district court reached the correct result, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Department 9  
Damien Alexander Phillips  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk