

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC ANTHONY EARLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85427-COA

FILED

FEB 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marc Anthony Earley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 4, 2022. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Earley filed his petition nearly three years after issuance of the remittitur on direct appeal on May 15, 2019. *See Earley v. State*, No. 74734-COA, 2019 WL 1772002 (Nev. Ct. App. Apr. 18, 2019) (Order Reversing and Remanding). Thus, Earley's petition was untimely filed. *See* NRS 34.726(1). Moreover, Earley'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(2). Earley's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

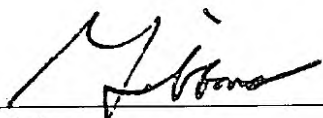
The district court summarily denied Earley's petition because Earley failed to allege good cause and prejudice in his petition. On the same day that Earley filed his notice of appeal, he filed a motion for reconsideration raising claims of good cause and prejudice. He argues these good cause claims on appeal. These good cause claims are not properly before this court because Earley was required to raise them "on the face of his petition," *Chappell v. State*, 137 Nev., Adv. Op. 83, 501 P.3d 935, 949 (2021), and they were not considered by the district court before the district court denied his petition, see NRS 34.750(5) ("No further pleadings may be filed except as ordered by the court."). Therefore, we decline to consider these claims on appeal. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Earley next argues the district court erred by failing to appoint 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

¹*Earley v. State*, No. 82301-COA, 2022 WL 57753 (Nev. Ct. App. Jan. 5, 2022) (Order of Affirmance).

petition was procedurally barred pursuant to NRS 34.810(2) and did not 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Marc Anthony Earley
Attorney General/Carson City
Clark County District Attorney

²We have reviewed all documents Earley has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Earley attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

Eighth District Court Clerk