

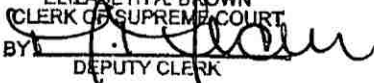
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEO HUNTER, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85409-COA

FILED

JUN 13 2023

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

ORDER OF AFFIRMANCE

Leo Hunter, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 20, 2022. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Hunter filed his petition more than ten years after issuance of the remittitur on direct appeal on May 8, 2012.¹ Thus, Hunter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hunter previously filed a postconviction habeas petition that was decided on the merits.² Hunter's petition was successive to the extent it alleged grounds for relief that had previously been decided on the merits, and it constituted an abuse of the writ to the extent it raised new and different grounds for relief. *See* NRS

¹*See Hunter v. State*, No. 58717, 2012 WL 1259261 (Nev. Apr. 11, 2012) (Order of Affirmance).

²*See Hunter v. State*, No. 72413-COA, 2018 WL 1053337 (Nev. Ct. App. Feb. 14, 2018) (Order of Affirmance).

34.810(1)(b)(2); NRS 34.810(2). Therefore, Hunter'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).

First, Hunter claimed he had good cause to overcome the procedural bars because he had asserted his claims in his first pro se postconviction habeas petition but postconviction counsel ignored these claims and failed to argue them in his prior supplemental petition. Hunter was not entitled to the appointment of postconviction counsel, see NRS 34.750(1); thus, he had no right to the effective assistance of postconviction counsel and any such ineffective assistance would not constitute good cause. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Accordingly, we conclude the district court did not err by denying this good-cause claim.

Second, Hunter claimed he had good cause to overcome the procedural bars because he had asserted his claims in his first pro se postconviction habeas petition but the district court failed to address them. “[W]hen a petition raises a claim that was not available at the time of a procedural default under NRS 34.726(1), it must be filed within a reasonable time after the basis for the claim becomes available.” *Rippo v. State*, 134 Nev. 411, 420, 423 P.3d 1084, 1096 (2018) (internal quotation marks omitted).

The district court issued its order denying Hunter's first petition on January 5, 2017. Hunter appealed the district court's order, this court affirmed, and the remittitur was issued on March 13, 2018. Even assuming the district court failed to address certain claims raised in

Hunter's first petition, Hunter did not explain why he waited more than four years after the issuance of the remittitur on his postconviction appeal to file the instant petition. Therefore, Hunter failed to demonstrate that he filed his petition within a reasonable time after the basis for his claims became available. Accordingly, we conclude the district court did not err by denying this good-cause claim.

Third, Hunter claimed he had good cause to overcome the procedural bars because he acquired new evidence: a toxicology report for the victim conducted a few hours after the shooting. Hunter contended that trial and postconviction counsel were ineffective for failing to obtain this evidence and that this evidence bolstered one of his previously raised claims of ineffective assistance of trial counsel.³

"[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Hunter did not allege that he filed his petition within one year after discovering this new evidence. Therefore, Hunter failed to demonstrate that his ineffective-assistance-of-counsel claim was not itself procedurally defaulted. See *Rippo*, 134 Nev. at 421-22, 423 P.3d at 1097 (recognizing a claim of ineffective assistance of trial or postconviction counsel must be filed within


³Hunter did not allege that the State withheld this evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), such that the withholding would amount to good cause. See *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (recognizing a *Brady* violation may constitute good cause to overcome the procedural time bar).

one year after becoming available). And as previously discussed, any ineffective assistance of postconviction counsel would not constitute good cause to overcome the procedural bars. *See Brown*, 130 Nev. at 571, 331 P.3d at 871-72. Accordingly, we conclude Hunter was not entitled to relief on this claim.

For the foregoing reasons, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michael Montero, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk