

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUJUAN DON LOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85513-COA

FILED

JUN 22 2023

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

ORDER OF AFFIRMANCE

Dujuan Don Looper appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 2, 2022. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Senior Judge.

Looper filed his petition more than seven years after issuance of the remittitur on direct appeal on January 5, 2015. *See Looper v. State*, No. 65608, 2014 WL 7118027 (Nev. Dec. 11, 2014) (Order of Affirmance). Thus, Looper's petition was untimely filed. *See* NRS 34.726(1). Moreover, Looper's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Looper's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Looper claimed he had good cause because his prior postconviction counsel failed to appeal the denial of his first, timely

¹*See Looper v. State*, No. 84804, 2022 WL 2187602 (Nev. June 16, 2022) (Order Dismissing Appeal).

postconviction petition for a writ of habeas corpus as counsel had promised or to inform Looper that his petition had been denied. 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), Looper was not entitled to the effective assistance of postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, postconviction counsel's alleged errors did not provide good cause to overcome the procedural bars.

On appeal, Looper asks this court to reconsider precedent and find that his petition is not time-barred due to the ineffective assistance of postconviction counsel. This court cannot overrule Nevada Supreme Court precedent. *See People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)); *see also Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing *stare decisis* "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court").

Looper also argues on appeal that *Brown* is distinguishable from Looper's case and is thus not controlling. Looper did not make this argument below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Therefore, Looper fails to demonstrate good cause to overcome the procedural bars. Accordingly, we conclude that the district court did not err by denying this petition, and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Westbrook


_____, Sr.J.
Silver

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 17
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

The Honorable Michael Gibbons, Chief Judge, did not participate in the decision in this matter.