

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIMBERLY ANN MADDOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

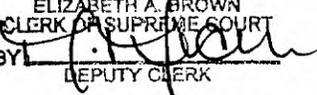
No. 86057-COA

KIMBERLY ANN MADDOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86058-COA

FILED

SEP 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kimberly Ann Maddox appeals from orders of the district court dismissing identical postconviction petitions for a writ of habeas corpus filed on November 18, 2022, in district court case numbers 2019-CR-00190 (Docket No. 86057) and 2019-CR-00191 (Docket No. 86058). These cases were consolidated on appeal. *See* NRAP 3(b). Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Maddox filed her petitions more than two years after entry of the judgments of conviction on June 12, 2020.¹ Thus, Maddox's petitions were untimely filed. *See* NRS 34.726(1). Moreover, Maddox's petitions were

¹Maddox did not appeal from the judgment of conviction in Docket No. 86057. And she filed an untimely appeal from the judgment of conviction in Docket No. 86058. *See Maddox v. State*, No. 81499, 2020 WL 5352201 (Nev. Sept. 4, 2020) (Order Dismissing Appeal).

successive because she had previously filed postconviction petitions for a writ of habeas corpus that were decided on the merits, and they constituted an abuse of the writ as she raised claims new and different from those raised in her previous petitions.² See NRS 34.810(3).³ Maddox's petitions were procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

Maddox claimed she had good cause because (1) the sentencing judge represented her in a prior criminal proceeding, thereby creating a conflict of interest; and (2) her due process rights were violated in relation to her ability to file a timely direct appeal. Maddox's claims were reasonably available to be raised in a timely petition, and she did not demonstrate an impediment external to the defense prevented her from doing so. Therefore, we conclude the district court did not err by denying these good-cause claims. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Maddox also claimed she had good cause because she received ineffective assistance from counsel who was appointed to represent her on her prior postconviction petitions for a writ of habeas corpus. Because the appointment of counsel in the prior postconviction proceedings 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), Maddox was not entitled to the effective assistance of

²Maddox filed identical postconviction petitions for a writ of habeas corpus on June 1, 2021, in each of her district court cases. Maddox did not appeal from the dismissal of either of those petitions.

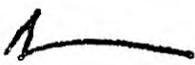
³The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. See A.B. 49, 82d Leg. (Nev. 2023).

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. Therefore, Maddox failed to demonstrate good cause to overcome the procedural bars, and we conclude the district court did not err by dismissing Maddox's petitions as procedurally barred.

Maddox argues on appeal that she is serving time for an incident created by a sheriff's deputy, there was insufficient investigation into her case, her medical history and background along with the deputy's statement should have been taken into account, and she should be resentenced in Docket No. 86058 to time served because her case was handled negligently. Maddox did not raise these claims below, and we decline to consider them for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nathan Tod Young, District Judge
Kimberly Ann Maddox
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk