

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBERT EMORY LESLIE, III,  
Appellant,  
vs.  
WILLIAM HUTCHINGS, WARDEN;  
AND THE STATE OF NEVADA,  
Respondents.

No. 86056-COA

FILED

OCT 11 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *E. A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Wilbert Emory Leslie, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 24, 2022, and supplemental pleadings. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Leslie argues the district court erred by denying his petition without first conducting an evidentiary hearing. Leslie's petition raised claims challenging his amended judgment of conviction. Leslie filed his petition more than 13 years after the Nevada Supreme Court issued its order granting Leslie the voluntary dismissal of his direct appeal on May 7, 2008. *See Leslie v. State*, Docket No. 49121 (Order Dismissing Appeal, May 7, 2008). Thus, Leslie's petition was untimely filed. *See* NRS 34.726(1); *see also Gonzales v. State*, 118 Nev. 590, 596 n. 18, 53 P.3d 901, 904 n. 18 (2002) (recognizing that where a timely direct appeal is voluntarily dismissed, the one-year time period for filing a postconviction petition for a writ of habeas corpus commences from the date of entry of this court's order granting the motion to voluntarily dismiss the appeal). Moreover, Leslie's petition was successive because he had previously litigated several postconviction petitions for a writ of habeas corpus subsequent to the entry of the amended judgment of conviction, and it constituted an abuse of the writ as he raised

claims new and different from those raised in his previous petitions.<sup>1</sup> See NRS 34.810(1)(b)(2); NRS 34.810(3).<sup>2</sup>

Leslie'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(4). "In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To warrant an evidentiary hearing on a good-cause claim, a petitioner must raise specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. See *id.* at 255, 71 P.3d at 508.

Leslie claimed below that he had good cause because the State drafted the parties' 2007 sentencing agreement to include language that was "deceptive and coercive," which led him to misunderstand a key provision in the agreement. Leslie alleged that the State-drafted provision and the sentencing court's inclusion of the "deceptive provision" in the March 16, 2007, amended judgment of conviction amounted to an impediment external to the defense.

Leslie's good-cause claim arises from events that occurred in 2007, and he has not alleged that any subsequent actions by the State or sentencing court impeded his ability to file a timely petition. Thus, the

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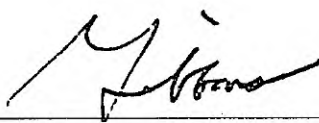
<sup>1</sup>See *Leslie v. State*, No. 75770, 2019 WL 2158888 (Nev. May 15, 2019) (Order of Affirmance); *Leslie v. State*, No. 66109, 2014 WL 7140450 (Nev. Dec. 11, 2014) (Order of Affirmance); *Leslie v. State*, Docket No. 61050 (Order of Affirmance, April 9, 2013); *Leslie v. State*, No. 52954, 2009 WL 3425431 (Nev. Oct. 21, 2009) (Order of Affirmance).

<sup>2</sup>The 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).

good-cause claim itself is procedurally barred. *See id.* at 252, 71 P.3d at 506. In addition, Leslie's subjective understanding of any provision in his sentencing agreement would not constitute an impediment external to the defense. *Cf. Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (“[M]ere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.”). Therefore, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Further, because Leslie failed to demonstrate good cause to overcome the procedural bars, we conclude the district court did not err by denying Leslie's petition as procedurally barred without conducting an evidentiary hearing on the substantive claims raised in his petition. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Mary Kay Holthus, District Judge  
The Law Office of Kristina Wildeveld & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk