

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY BOLIN,
Appellant,
vs.
WILLIAM REUBART; AND THE STATE
OF NEVADA,
Respondents.

No. 85894

FILED

NOV 22 2023

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

A jury found appellant Gregory Bolin guilty of the 1995 kidnapping, sexual assault, and first-degree murder of Brooklyn Ricks. The jury sentenced Bolin to death. This court affirmed the convictions and sentence in 1998. *Bolin v. State (Bolin I)*, 114 Nev. 503, 960 P.2d 784 (1998). In 1999, Bolin filed a postconviction petition for a writ of habeas corpus. The district court denied the petition and this court affirmed. *Bolin v. State (Bolin II)*, No. 45383 (Nev. June 22, 2007) (Order of Affirmance). On June 21, 2022, Bolin filed a second postconviction habeas petition raising collateral challenges to the convictions. The district court denied the petition without conducting an evidentiary hearing. We affirm.

Bolin concedes that the instant petition is procedurally barred, and that he filed the petition simply to exhaust his state claims to pursue federal habeas relief. Indeed, Bolin's petition is subject to several

procedural bars. First, the petition was untimely as it was filed over 22 years after remittitur issued from Bolin's direct appeal. *See* NRS 34.726(1). The petition was successive because Bolin had previously filed a postconviction petition, and it constituted an abuse of the writ because Bolin raised claims new and different from those raised in his previous petition, which were therefore subject to waiver. *See* NRS 34.810(1)(b), (2).¹ Petitions that are untimely, successive, or an abuse of the writ are subject to dismissal absent a showing of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(1)(b), (3). To establish 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).

As good cause to overcome the procedural bars, Bolin contends that first postconviction counsel provided ineffective assistance. After being sentenced to death, Bolin was statutorily entitled to appointed counsel for the first postconviction proceeding. NRS 34.820(1). As a result, Bolin was entitled to the effective assistance of first postconviction counsel and may demonstrate good cause to file a second petition by showing that first postconviction counsel provided ineffective assistance. *Rippo v. State*, 134 Nev. 411, 418, 423 P.3d 1084, 1094 (2018). However, to constitute good cause, the postconviction-counsel claims must be raised within a reasonable time after they became available. *Id.* at 419-22, 423 P.3d at 1095-97. Thus,

¹The Legislature recently made a technical amendment to NRS 34.810, which renumbered the subsections. Assembly Bill 49, 82nd Leg. (Nev. 2023). We use the numbering in effect when the district court denied Bolin's postconviction petition.

Bolin had to raise his claims related to the ineffective assistance of first postconviction counsel within one year of the “conclusion of the postconviction proceedings in which the ineffectiveness allegedly occurred.” *Id.* at 420, 423 P.3d at 1096.

Bolin concedes that his allegation of ineffective assistance of first postconviction counsel is untimely because he filed the second petition nearly 15 years after remittitur issued from his first postconviction appeal on July 17, 2007. As the postconviction-counsel claims are themselves untimely, they cannot constitute good cause to excuse the procedural default of the other claims raised in the petition. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (stating that an ineffective-assistance claim may excuse a procedural default only if that claim is not itself procedurally defaulted). Bolin offers no excuse for the delay in raising postconviction-counsel claims. Instead, Bolin makes a bare assertion that applying the one-year time bar to claims of ineffective assistance of first postconviction counsel violates due process. We find Bolin’s contention unavailing because it was raised for the first time in the reply brief on appeal, *see* NRAP 28(c) (providing that a reply brief is “limited to answering any new matter set forth in the opposing brief”), and Bolin fails to support the argument with relevant authority or cogent argument. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (providing that appellant bears the burden to present relevant authority and cogent argument).

Because “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Bolin failed to demonstrate any grounds to excuse those procedural default rules,

we conclude that the district court did not err in denying Bolin's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

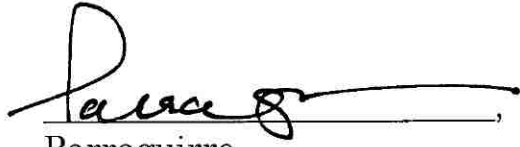

_____, C.J.
Stiglich


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Hon. Monica Trujillo, District Judge
Goldman Ismail Tomaselli Brennan & Baum LLP/Chicago
Law Office of Jim Hoffman
Goldman Ismail Tomaselli Brennan & Baum LLP/Santa Monica
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk