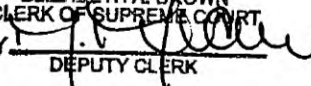


IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER MARK COCA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85519  
**FILED**  
MAR 22 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge.

Appellant Peter Coca pleaded guilty to attempted murder with the use of a deadly weapon and six counts of assault with the use of a deadly weapon upon a peace officer. On direct appeal, Coca challenged the sentence imposed by the district court. After the district court entered an amended judgment of conviction that clarified the aggregate sentence of 20 to 52 years, Coca voluntarily withdrew the appeal. *Coca v. State (Coca I)*, No. 62455, 2014 WL 902364 (Nev. Mar. 6, 2014) (Order Dismissing Appeal). In 2015, Coca filed a postconviction petition for a writ of habeas corpus. The Court of Appeals affirmed the district court's order denying that petition. *Coca v. Dzurenda (Coca II)*, No. 77913-COA, 2020 WL 3969902 (Nev. Ct. App. July 13, 2020) (Order of Affirmance), and remittitur issued on August 7, 2020. On July 29, 2022, Coca filed a second postconviction habeas petition raising collateral challenges to the convictions and sentence. The district court dismissed the petition as procedurally barred. Coca appeals, and we affirm.

As Coca concedes, his current petition is subject to multiple procedural bars. The petition was untimely, because it was filed over 8 years after this court dismissed Coca's direct appeal. See NRS 34.726(1); *Gonzales v. State*, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002) (recognizing that if a timely direct appeal is voluntarily dismissed, the one-year period to file a postconviction petition for a writ of habeas corpus begins from the date of entry of the order granting the voluntary dismissal of the appeal). The petition was also successive because Coca had previously filed a postconviction petition, and it constituted an abuse of the writ because Coca raised claims new and different from those raised in the previous petition, which were therefore also subject to waiver. See NRS 34.810(1)(b), (2).<sup>1</sup> 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, Coca argues that first postconviction counsel provided ineffective assistance. This argument is precluded by our decision in *Brown v. McDaniel*, 130 Nev. 565, 331 P.3d 867 (2014). As a noncapital petitioner, Coca was not entitled to the appointment of postconviction counsel. See *id.* at 571, 331 P.3d at 871 (explaining that NRS 34.750(1) "provides for the discretionary appointment

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<sup>1</sup>The Legislature recently made a technical amendment to NRS 34.810, which renumbered the subsections. A.B. 49, 82nd Leg. (Nev. 2023). We use the numbering in effect when the district court dismissed Coca's postconviction petition.

of counsel to represent noncapital habeas petitioners”). Because appointment of postconviction counsel was not mandated, Coca had no constitutional or statutory right to the effective assistance of that counsel. *See id.* at 569, 331 P.3d at 870. As we explained in *Brown*, “[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel.” *Id.* (quoting *McKague v. Whitley*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)).

Coca concedes that his cause argument is foreclosed under Nevada law. But Coca urges us to overrule *Brown* and hold that the ineffective assistance of first postconviction counsel in a noncapital case can constitute good cause to overcome the procedural bars to defaulted trial- and appellate-counsel claims. “[U]nder the doctrine of stare decisis, we will not overturn [precedent] absent compelling reasons for so doing.” *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (footnoted omitted). Before overruling precedent, we consider whether the prior decision has been proven “badly reasoned” or “unworkable.” *State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013); *see also Kapp v. Kapp*, 31 Nev. 70, 73, 99 P. 1077, 1078 (1909) (concluding that, when an issue has been squarely presented and decided, “the point should not be unsettled, except for very weighty and conclusive reasons”).

Here, Coca argues that *Brown* should be reconsidered and overruled for two reasons. First, Coca contends that *Brown* was wrongly decided. Second, Coca asserts that the Supreme Court’s decision in *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022), warrants overruling *Brown* and adopting the reasoning outlined in *Martinez v. Ryan*, 566 U.S. 1 (2012). The first argument is insufficient as it demonstrates mere disagreement with *Brown*’s conclusion. *See Miller*, at 597, 188 P.3d at 1124 (holding that


“[m]ere disagreement” with a prior decision is not sufficient to overturn precedent). The second argument is unpersuasive. Although *Ramirez* affects federal habeas courts’ consideration of defaulted trial-counsel claims, the decision does not undermine *Brown*’s interpretation of Nevada law. In *Brown*, this court concluded that the equitable exception discussed in *Martinez* “is contrary to the statutory language in NRS Chapter 34 and the clear legislative intent behind the statutes.” 130 Nev. at 572, 331 P.3d at 872. Likewise, *Ramirez* addressed federal habeas practice and procedure and thus does not undermine the conclusion in *Brown* that any change to Nevada’s “post-conviction proceedings is a matter of policy and lies in the hands of the Legislature.” *Id.* at 576, 331 P.3d at 875. Thus, Coca has not met his burden of showing that *Brown* should be overruled.

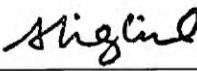
Furthermore, even were we to overrule *Brown*, Coca would not be entitled to relief. Coca filed the petition nearly two years after remittitur issued in the first postconviction appeal. See *Coca II*, 2020 WL 3969902. Thus, Coca’s claims of ineffective assistance of first postconviction counsel were untimely under NRS 34.726(1), as they were not raised within one year after the remittitur issued in the first postconviction appeal. *Rippo v. State*, 134 Nev. 411, 419-22, 423 P.3d 1084, 1095-97 (2018). Coca does not address or explain his delay in raising the postconviction-counsel claims. Thus, even crediting Coca’s arguments that *Brown* should be reconsidered, Coca has not shown that relief is warranted.

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 Coca failed to demonstrate any grounds to excuse those procedural default rules,


the district court did not err in dismissing Coca's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

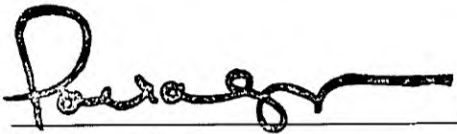
  
\_\_\_\_\_, C.J.  
Cadish

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Herndon

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Kriston N. Hill, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Elko County District Attorney  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Washoe County District Attorney  
Elko County Clerk