

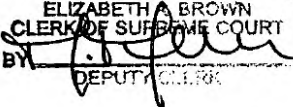
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIN DESHAUN WARE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85345-COA

**FILED**

MAR 17 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Erin Deshaun Ware appeals from an order of the district court denying two postconviction petitions for a writ of habeas corpus, one filed on June 10, 2022, and the other filed on and June 17, 2022. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Ware filed his petitions more than four years after entry of the judgment of conviction on April 19, 2018. Thus, Ware's petitions were untimely filed. *See* NRS 34.726(1). Moreover, Ware's petitions constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>1</sup> *See* NRS 34.810(2). Ware's petitions were procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Ware appeared to contend that he had good cause to overcome the procedural bars as to his sentencing claim because he could not raise it until the Nevada Supreme Court issued its decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021). *Gonzales* did not announce a new rule

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<sup>1</sup>*See Ware v. State*, No. 84262-COA, 2022 WL 3755330 (Nev. Ct. App. Aug. 26, 2022) (Order of Affirmance).

of law; rather, the supreme court merely clarified that NRS 34.810(1)(a) had never precluded claims that counsel rendered ineffective assistance at sentencing. *See id.* at 403, 492 P.3d at 562 (“In sum, we explicitly hold today what has been implicit in our caselaw for decades.”). Therefore, Ware could have raised his claims prior to the supreme court’s decision in *Gonzales*. *See Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) (“A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.”); *see also Nika v. State*, 124 Nev. 1272, 1286, 198 P.3d 839, 849 (2008) (discussing when a “state court interpretation of a state criminal statute constitutes a change in—rather than a clarification of—the law”). And Ware did not attempt to overcome the procedural bars to any claim unrelated to sentencing. Therefore, Ware failed to demonstrate good cause to overcome the procedural bars, and we conclude the district court did not err by denying the petitions as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Tara D. Clark Newberry, District Judge  
Erin Deshaun Ware  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk