

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 81697-COA

FILED

JUN 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bennett Grimes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Grimes argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Grimes filed his petition on May 27, 2020, more than six years after issuance of the remittitur on direct appeal on March 24, 2014. *See Grimes v. State*, Docket No. 62835 (Order of Affirmance, February 27, 2014). Thus, Grimes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Grimes' petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Grimes' 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(3). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true,

¹*Grimes v. State*, Docket No. 74419-COA (Order of Affirmance, December 19, 2008).


would entitle him to relief. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

In his petition, Grimes appeared to argue he had good cause because trial counsel was ineffective during the trial court proceedings and he recently discovered the errors committed by counsel. The underlying claims of ineffective assistance of counsel were reasonably available to have been raised during the timely filing period for a postconviction petition, and Grimes did not demonstrate an impediment external to the defense prevented him from raising them in a timely manner. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Next, Grimes argues on appeal that procedural default rules do not bar review of a federal claim, he has good cause due to ineffective assistance of postconviction counsel, and his underlying claims should be reviewed on the merits because he is actually innocent. Grimes did not raise these claims in his petition, and he does not explain why he did not do so. Accordingly, we decline to consider these claims in the first instance. *See McNelton State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, C.J.


Tao, J.


Bulla, J.

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk