

IN THE SUPREME COURT OF THE STATE OF NEVADA

YU JUN WANG,  
Appellant,  
vs.  
CITY OF LAS VEGAS,  
Respondent.

No. 51348

**FILED**

SEP 18 2008

FRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Yu Jun Wang's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On May 19, 2004, Wang was convicted in the municipal court, pursuant to a bench trial, of one count of soliciting for purposes of prostitution and ordered to pay a fine of \$200. On December 10, 2004, the district court conducted a hearing and denied Wang's direct appeal from the judgment of conviction.

On August 30, 2007, Wang filed a post-conviction petition for a writ of habeas corpus in the district court. The City of Las Vegas filed an opposition to Wang's petition. The district court heard arguments from counsel and, on March 5, 2008, entered an order denying Wang's petition. In its order, the district court found that Wang failed to demonstrate either good cause sufficient to excuse the untimeliness of her petition or that she received ineffective assistance of counsel. This timely appeal followed.

Wang contends that the district court erred by denying her petition. Specifically, Wang argues that counsel was ineffective for failing

to advise her about (1) the inherent risk of a trial versus a negotiated plea, and (2) the employment and immigration consequences of a conviction. Wang claims that “her lack of legal knowledge and training” and limited English-language skills amount to good cause sufficient to excuse the untimeliness of her petition. We disagree.

Application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory.<sup>1</sup> As Wang concedes, her petition was untimely and procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>2</sup> Good cause is established by showing that an impediment external to the defense prevented a petitioner from filing a timely petition.<sup>3</sup> Without good cause for the delay and prejudice, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider her claims would result in a fundamental miscarriage of justice.<sup>4</sup>

We conclude that the district court did not err by finding that Wang failed to demonstrate good cause sufficient to excuse the untimeliness of her petition. The district court found that Wang’s alleged language barrier was not good cause, and our review of the trial transcript

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<sup>1</sup>See State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1075 (2005).

<sup>2</sup>See NRS 34.726(1).

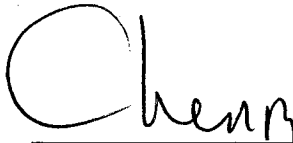
<sup>3</sup>See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998), clarified by Hathaway v. State 119 Nev. 248, 71 P.3d 503 (2003); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).


<sup>4</sup>See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

reveals that Wang's English-language skills were more than adequate and reflected an ability to communicate effectively. Wang has not demonstrated that any alleged language barrier prevented her from raising her claims in a timely petition. Additionally, this court has stated that a petitioner's lack of legal training is not good cause.<sup>5</sup> And finally, the district court found that Wang failed to demonstrate that she received ineffective assistance. We agree and further conclude that Wang has failed to demonstrate that a failure to consider her petition would result in a fundamental miscarriage of justice. Therefore, the district court did not err by denying Wang's petition.

Having considered Wang's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Saitta

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<sup>5</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 659-60, 764 P.2d 1303, 1306 (1988) (holding that a lack of legal assistance is not sufficient good cause).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Kirk T. Kennedy  
Las Vegas City Attorney  
Eighth District Court Clerk