

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENE GATO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53887

**FILED**

MAY 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

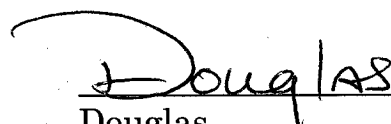
Appellant filed his petition on July 2, 2008, more than one year after this court issued the remittitur from his direct appeal on June 26, 2007. See Gato v. State, Docket No. 45166 (Order of Affirmance, May 30, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

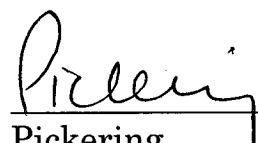
Preliminarily, we note that the district court determined that appellant demonstrated good cause and prejudice to overcome the procedural bars because appellant's counsel was mistaken as to the actual date of remittitur. Apparently counsel believed that the remittitur date was July 2, 2007, because that is when the remittitur was filed by the Eighth Judicial District Court Clerk. Counsel's mistake about the remittitur date does not demonstrate good cause because this mistake does not amount to an impediment external to the defense and is a legally insufficient excuse. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,

506 (2003) (“[G]ood cause’ means a ‘substantial reason; one that affords a legal excuse.”); see also Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997); McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). This court has specifically held that the remittitur date is the date the remittitur is issued and not when the district court clerk files the remittitur. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). Thus, the district court erred in reaching the merits of the petition. Nevertheless, we conclude that the denial of the petition was the correct result because the petition was procedurally barred, and we affirm the denial of the petition on that basis. See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

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

cc: Hon. Douglas W. Herndon, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk