

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN WHITEHEAD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55865

**FILED**

SEP 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Jonathan Whitehead's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Whitehead pleaded guilty to DUI causing death and DUI causing substantial bodily harm. The district court entered a judgment of conviction on May 7, 2008. The court amended the judgment of conviction on January 27, 2009, for the sole purpose of setting the final amount of restitution. Whitehead then filed a post-conviction petition in the district court on May 13, 2009. The State moved to dismiss the petition as untimely and the district court denied it as procedurally barred on that basis.

In this appeal, Whitehead claims that the district court erred in dismissing his petition as untimely, arguing that the one year limitation of NRS 34.726 begins from the entry of the last amended

judgment of conviction. Whitehead errs. See Sullivan v. State, 120 Nev. 537, 540, 96 P.3d 761, 764 (2004) (stating that “restarting the one-year time period for all purposes every time an amendment occurs would frustrate the purpose and spirit of NRS 34.726”). Whitehead’s petition is therefore procedurally barred absent a demonstration of good cause for the delay and prejudice. See NRS 34.726(1); NRS 34.810(3); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a post-conviction habeas corpus petition begins to run from the entry of the judgment of conviction if no direct appeal was taken). Good cause is established by showing that an impediment external to the defense prevented a petitioner from filing a timely petition. Passanisi v. Director, Dep’t Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).

Whitehead has failed to articulate good cause to excuse the untimely filing of his petition, and therefore the district court was compelled to dismiss it. See State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003). To the extent that Whitehead argues that good cause exists to excuse his late filing because the amount of restitution was not determined until 2009, he also errs. Entry of an amended judgment of conviction only provides good cause to excuse an untimely petition when the claims raised in the petition relate to the substance of the amendment and could not have been raised earlier. Sullivan, 120 Nev. at 541, 96 P.3d at 764. In this case, none of the 45 claims raised in Whitehead’s petition relate to restitution and thus all could have been raised earlier.

