

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK P. MCLAUGHLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58905

FILED

APR 11 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Angus*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a proper person post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Jack McLaughlin filed his petition on September 27, 2010, more than five years after entry of the judgment of conviction on June 28, 2005. Thus, his petition was untimely filed. See NRS 34.726(1). McLaughlin's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice. See id. Moreover, because the State specifically pleaded laches, McLaughlin was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

McLaughlin argues that he had good cause to excuse the procedural bar because he was unaware of his rights concerning his sentence or procedure, and he did not have assistance or access to the law library. McLaughlin failed to demonstrate an impediment external to the defense to excuse his procedural defects. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). His lack of assistance and knowledge of the law and legal procedures do not constitute good cause to excuse the delay. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), superseded by statute on other grounds as stated in State v.

Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003). To the extent that he claims that his delay was caused by his counsel's failure to advise him of his appellate and post-conviction rights, such an argument would not be good cause in this case because a claim of ineffective assistance of counsel would itself be procedurally time-barred. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. As to his assertion that he did not have access to a law library, he failed to specify any facts as to how this impeded him from filing a post-conviction motion for more than four years. See id at 255, 71 P.3d at 508; Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Therefore, we conclude that the district court did not err in denying the petition as procedurally time-barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Elissa F. Cadish, District Judge
Thomas Michaelides
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk