

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60197

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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; Donald M. Mosley, Judge.


Appellant Erick M. Brown contends that the district court erred by denying his habeas petition. The district court denied Brown's petition on the merits after conducting an evidentiary hearing on the claims of ineffective assistance of counsel and finding that trial and appellate counsel were effective.

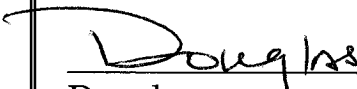
The State contends that the petition was untimely filed and that the district court should have denied the petition on that ground. We agree. The record reveals that Brown filed his petition after the statutory period had run and made no attempt to demonstrate good cause for the delay. See NRS 34.726(1); Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Accordingly, we conclude that Brown's petition was procedurally barred and should have been denied as such. See State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003) (application of the procedural default rules to post-conviction habeas petitions is mandatory).

As a separate and independent ground for denying relief, we conclude that the district court's factual findings are supported by

substantial evidence and are not clearly erroneous, and Brown has not demonstrated that the district court erred as a matter of law. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for ineffective-assistance claims); Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (providing the standard of review for ineffective-assistance claims); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying the Strickland test to ineffective appellate counsel claims); see also Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his ineffective-assistance claims by a preponderance of the evidence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Chief Judge, Eighth Judicial District Court
Robert L. Langford & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk