

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY ANDREW BRIM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60942

FILED

DEC 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant filed his petition on April 20, 2012, more than two years after entry of the judgment of conviction on January 21, 2010. Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause: cause for the delay and undue prejudice. See NRS 34.726(1). Cause must be an impediment external to the defense and must afford a legal excuse. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Appellant claimed that he had cause for the delay because he was mentally incompetent prior to, during, and after entry of his plea. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate cause for his delay. First, even assuming that


¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

mental incompetence could amount to a legal excuse and an impediment external to the defense, contra Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), the record does not support appellant's argument that he was incompetent to file a petition.² The documents presented by appellant in support of his petition, which include examinations conducted prior to his plea canvass, indicate that he was alert and oriented, his thought process was logical and goal-directed, and his cognition was intact or had some impairment. Nowhere in the documentation provided by appellant is there an indication that he was unable to consult with a reasonable degree of rational understanding and unable to understand the proceedings. Godinez v. Moran, 509 U.S. 389, 396-97 (1993); Dusky v. United States, 362 U.S. 402, 402 (1960); Riker v. State, 111 Nev. 1316, 1325, 905 P.2d 706, 711 (1995); Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983). Appellant was thoroughly canvassed, twice, and answered all questions appropriately, including questions regarding his medications. Appellant informed the district court at the plea canvass that he did not think his thoughts were affected by the medications and that he understood what he was doing. Further, appellant litigated a post-conviction motion to correct an illegal sentence, which indicates that he had the ability to litigate a post-conviction petition in a more timely fashion. Simply being diagnosed with mental illness and taking medication does not render one mentally incompetent. Under these circumstances, we conclude that the district


²Likewise, the record does not support appellant's claim that he was incompetent at the time he entered his plea.

court did not err in dismissing the petition as procedurally time barred.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Roy Andrew Brim
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³The district court did not abuse its discretion in denying appellant's request for the appointment of counsel. NRS 34.750(1).