

IN THE SUPREME COURT OF THE STATE OF NEVADA

DE RAC A. HANLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62932

**FILED**

**MAR 11 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Michael Villani, Judge.

On appeal from the denial of his petition filed on April 13, 2012, appellant contends that the district court erred by denying his petition as untimely because the district court implicitly waived the time-bar by appointing counsel to assist appellant and supplement his petition. Appellant's interpretation of appointment of counsel is too narrow, as the district court can appoint counsel to assist a petitioner in demonstrating good cause for a late petition if petitioner meets the factors of NRS 34.750(1). Further, even assuming that the district court implicitly waived the time-bar, application of the procedural default rule in NRS 34.726(1) is mandatory and cannot be disregarded by the district court. *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d

1070, 1074 (2005). Appellant filed his post-conviction petition almost three years after this court issued the remittitur from his direct appeal. *See Hanley v. State*, Docket No. 48826 (Order of Affirmance, May 5, 2009). Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—that is, cause for the delay and prejudice. *See id.*

Appellant asserts that he is elderly, has mental health issues, was unaware that there were time restraints on filing a post-conviction petition, and has relied on other inmates in preparing his petition. None of these excuses constitute “good cause,” as appellant failed to demonstrate that his age, mental issues, ignorance of the law, or reliance on inmates are impediments external to the defense that prevented him from filing a timely petition. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation, and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

Appellant also appears to contend that the district court should have continued the hearing on his post-conviction petition due to appellant's incoherent state of mind at the time. Appellant fails to demonstrate that the district court's denial of a continuance prejudiced

him, given that his petition was time-barred and he failed to demonstrate good cause. Accordingly, we conclude that the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

*Hardesty*, J.  
Hardesty

*Douglas*, J.  
Douglas

*Cherry*, J.  
Cherry

cc: Hon. Michael Villani, District Judge  
Travis E. Shetler  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, we decline to address appellant's other claims.