

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW ERIC HARGRAVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63166

FILED

NOV 14 2013

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on October 30, 2012, more than two years after entry of the judgment of conviction on April 1, 2010. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, appellant claimed that he had cause for the delay because counsel failed to inform him of his right to appeal and failed to file an appeal. Appellant did not demonstrate cause for the delay because he


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 Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

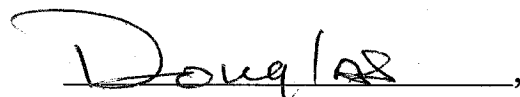
failed to demonstrate that he reasonably believed an appeal was pending and that he filed his petition within a reasonable time of learning no appeal had been taken. *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). To the extent that appellant alleged that his counsel failed to file a Motion for Reconsideration on his behalf, this claim does not constitute good cause to overcome the mandatory procedural bars of NRS 34.726(1).


Second, appellant claimed that he had cause to excuse the delay because he was mentally incompetent at the time he entered his guilty plea and that the district court lacked jurisdiction based on his invalid guilty plea. Appellant attached a copy of a psychological assessment report, dated March 12, 2010, to demonstrate his mental health problems, including diagnoses for posttraumatic stress disorder, cognitive disorder, and polysubstance abuse. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. *Id.* at 252, 71 P.3d at 506. The psychological assessment is not newly discovered as it pre-dates his judgment of conviction, and thus, any claim relating to his competence in the plea proceedings was reasonably available to be raised in a timely petition. *Id.* at 252-53, 71 P.3d at 506. Further, the documents do not demonstrate that he was mentally incompetent at the time he entered his plea. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402, 402 (1960)). Moreover, this claim does not implicate the jurisdiction of the courts. *See Nev. Const. art. 6, § 6.*

We conclude that the district court did not err in denying appellant's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Michael Villani, District Judge
Matthew Eric Hargrave
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk