

IN THE SUPREME COURT OF THE STATE OF NEVADA

UBALDO URBINA-MALDONADO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63330

FILED

DEC 12 2013

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on December 20, 2012, more than three years after issuance of the remittitur on direct appeal on October 6, 2009. *Urbina-Maldonado v. State*, Docket No. 51848 (Order of Affirmance, September 10, 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—cause for the delay and undue prejudice. *See id.*

In denying the petition, the district court stated that appellant had not indicated any good cause for the delay. However, in answer to question 18, rather than question 19 (the time bar), appellant indicated that he had good cause to raise his claims because of an inability to

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<sup>1</sup>This 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).

comprehend English, “state imposed impediments,” prosecutorial misconduct, judicial bias and error, fraud, and ineffective assistance of trial counsel. While most of these would not provide cause for the delay because they were not supported by specific facts or did not actually explain the delay, official interference is an impediment external to the defense that may explain a delay. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Confusion relating to the appointment of counsel prior to the filing of the petition would provide an explanation for part of the delay (March 28, 2012 through October 5, 2012) because appellant would not have filed a proper person petition during the time he believed he was represented by counsel.<sup>2</sup> *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506. Further, a language barrier may under certain circumstances provide good cause where a petitioner is unable to access legal materials in his native language or receive help in his native language because of inadequacies in the prison’s resources. *See id*; *see also Bounds v. Smith*, 430 U.S. 817, 828 (1977) (discussing meaningful access to the courts), *limited by Lewis v. Casey*, 518 U.S. 343, 354-56 (1996); *Mendoza v. Carey*;

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<sup>2</sup>On December 23, 2011, appellant filed a motion for the appointment of counsel, without having first filed a post-conviction petition for a writ of habeas corpus. On March 28, 2012, the district court granted the motion, determining that appellant was unable to comprehend the proceedings. The district court withdrew the appointment of counsel after the State filed an original petition for a writ of mandamus/prohibition in this court objecting to the appointment of counsel prior to the filing of the petition. *See State v. Second Judicial District Court*, Docket No. 60833 (Order Dismissing Petition, October 5, 2012). The dismissal of the petition rested upon the lack of standing for the State to file the petition. The district court’s withdrawal of the appointment of counsel also rendered the State’s objection moot.

449 F.3d 1065, 1070 (9th Cir. 2006) (recognizing that equitable tolling in the federal courts requires a non-English speaking petitioner demonstrate that during the time period, the petitioner was unable to procure either legal materials in his own language or translation assistance despite diligent efforts). In this case, the petition is written in English with an attached supporting affidavit written in Spanish, for which there is no translation in the record. The district court's order contains no findings of fact or conclusions of law regarding appellant's claims of state interference and the effect of a potential language barrier, and thus, we cannot affirm the denial of the petition as procedurally barred. Therefore, we reverse and remand for further proceedings to consider the procedural time bar and whether appellant demonstrated cause for the entire length of his delay.

Further, it appears that the district court should have appointed counsel to assist appellant after the filing of the petition. NRS 34.750 provides for the discretionary appointment of post-conviction counsel after the filing of the petition and sets factors which the court may consider in making its determination to appoint counsel, including whether the petitioner is unable to comprehend the proceedings. The district court previously determined that appellant had difficulties comprehending the proceedings when it ordered the appointment of counsel prior to the filing of the petition, and while the appointment of counsel was premature, the record supports the district court's initial determination that petitioner had difficulties comprehending the proceedings. Under these circumstances, on remand the district court should appoint counsel to assist appellant in the post-conviction

proceedings in addressing the procedural bar and with substantive claims if appellant is able to establish good cause for the delay. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Pickering, C.J.  
Pickering

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

cc: Hon. Brent T. Adams, District Judge  
Ubaldo Urbina-Maldonado  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk