

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL FAHEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64501

FILED

MAR 11 2014

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 and a post-conviction petition requesting genetic marker testing pursuant to NRS 176.0918.¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Post-conviction petition for a writ of habeas corpus

Appellant filed his post-conviction petition for a writ of habeas corpus on April 24, 2013, more than two years after entry of the judgment of conviction on July 22, 2010. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. *See id.*

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).

In an attempt to demonstrate good cause for the delay, appellant claimed that he was indigent and did not have assistance or access to a law library. Appellant failed to demonstrate an impediment external to the defense to excuse his procedural defects. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). His indigent status and lack of assistance did not constitute good cause to excuse the delay, *see Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), and he failed to provide specific facts relating to his alleged deprivation of access to a law library, *see Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, we conclude that the district court did not err in denying his post-conviction petition for a writ of habeas corpus as procedurally barred.

Post-conviction petition for genetic marker testing

Appellant filed his post-conviction petition for genetic marker testing on June 24, 2013. The district court applied the one-year procedural bar in NRS 34.726(1) to the petition and denied it as untimely. We conclude that the district court erred in applying NRS 34.726(1)'s time limit to a post-conviction petition filed under NRS 176.0918, but we affirm because the district court reached the correct result in denying the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Appellant failed to demonstrate that he met the requirements set forth in NRS 176.0918, as he admitted to having sex with the victim and pleaded

guilty to the offense of attempted lewdness with a child under the age of 14. See NRS 176.0918(3), (4)(a). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Valorie J. Vega, District Judge
Paul Fahey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²In light of this disposition, we deny appellant's motion for appointment of counsel. We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.