

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN TROY WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64777

FILED

MAY 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
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; Valerie Adair, Judge.

Appellant filed his petition on September 25, 2013, more than five years after entry of the judgment of conviction on April 18, 2008, and more than three years after entry of the order revoking probation and second amended judgment of conviction on August 20, 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).

Appellant appeared to claim that he had good cause to overcome the procedural bar because he did not realize that his presentence credit was only being applied to his first sentence and not also to his consecutive sentence until he was paroled to his consecutive

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).

sentence. Appellant failed to demonstrate an impediment external that prevented him from filing this claim in a timely petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant also failed to demonstrate actual prejudice because his claim lacked merit. Appellant was not entitled to have the credit applied to each consecutive term of imprisonment imposed in the judgment of conviction; the credits were properly applied to the ultimate sentence imposed in this case. *See NRS 176.055(1); Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996). Therefore, we conclude that the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Valerie Adair, District Judge
Brian Troy Walker
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk