

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN STATELY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65156

FILED

NOV 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Maure*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Brian Stately's post-conviction petition for a writ of habeas corpus and denying his motion to modify sentence. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

First, Stately contends that the district court erred by dismissing his post-conviction petition as procedurally barred. We disagree. Stately filed the instant petition on August 27, 2012, more than one year after entry of his judgment of conviction on December 14, 2010. Thus, the petition was untimely and was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1). The district court concluded that dismissal was warranted because Stately's claim that he had pursued relief in federal court did not constitute good cause to excuse the untimely filing. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). We conclude that the district court did not err.¹

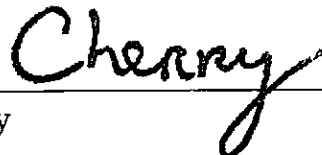
¹We decline Stately's invitation to reconsider *Colley*.

Second, Stately contends that the district court erred by denying his motion to modify sentence. The district court denied Stately's motion on the grounds that his claims fell outside the scope of those permissible in such a motion. We agree because Stately did not allege that the district court sentenced him based upon mistaken assumptions regarding his criminal record that worked to his extreme detriment. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Elliott A. Sattler, District Judge
David Kalo Neidert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk