

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEREK KIRK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65571

FILED

OCT 15 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 dismissing a post-conviction petition for a writ of habeas corpus.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant filed his petition on April 17, 2014, more than two years after entry of the judgment of conviction on October 25, 2011.² 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 first claimed he had good cause because he is indigent and not legally trained. Appellant failed to demonstrate that this issue provided good cause to overcome the procedural bar as he failed to demonstrate that there was an impediment external to the defense that

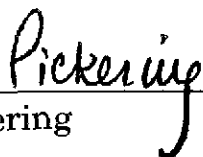
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

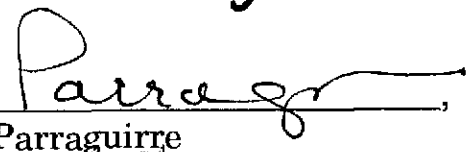
²No direct appeal was taken.

prevented appellant from raising his claims in a timely petition. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation, and reliance on the assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

Second, appellant claimed that he had good cause because he had inadequate access to law libraries in the Washoe County and Carson City jails. Appellant failed to demonstrate that lack of access to a law library deprived him of meaningful access to the courts. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977), limited by *Lewis v. Casey*, 518 U.S. 343, 354-56 (1996). Appellant acknowledged he was on probation for a period following his conviction in this matter, indicating that he was free to challenge his conviction while not housed in a county jail. Accordingly, appellant failed to demonstrate that official interference caused him to be unable to file a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court did not err in dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. James E. Wilson, District Judge
Derek Kirk
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk