

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY CEPERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65785

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant challenges the district court's determination that his petition was procedurally barred under NRS 34.726(1). He contends that he established "good cause" to excuse the untimely petition by demonstrating that the delay in filing was caused by an impediment external to the defense. And he argues that he made numerous attempts to obtain his case file from his previous defense counsel, he could not file a meaningful petition without the file, and he filed his petition immediately after receiving the file.

To establish good cause to excuse an untimely petition, a petitioner must demonstrate that the delay was not his fault and that he will be unduly prejudiced if the petition is dismissed. *State v. Huebler*, 128 Nev. ___, ___, 275 P.3d 91, 94-95 (2012). A delay is not the petitioner's fault when an impediment external to the defense prevented him from complying with the procedural default rules, and a petitioner is unduly prejudiced when the alleged error works to his actual and substantial

disadvantage. *Id.* at ____, 275 P.3d at 95. We review the district court's good cause determination de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Id.*

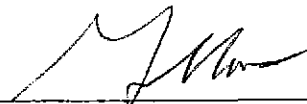
Here, the district court conducted an evidentiary hearing on appellant's claim of good cause and made the following factual findings. Appellant's January 31, 2013, petition was untimely because it was filed more than one year after the Nevada Supreme Court issued the remittitur on direct appeal on October 10, 2011. Appellant had difficulties retrieving his case files from his previous counsel and sought help from the district court. Appellant claimed, among other things, that the case file contained a global plea offer that had not been conveyed to him, and that he would have accepted the offer had it been conveyed to him. And the trial transcript demonstrates that appellant told the district court that he did not want to take a plea bargain and that he was taking all of his cases to trial.


Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong. We note that the Nevada Supreme Court has previously held that counsel's failure to send appellant his case files does not constitute good cause because it does not "prevent appellant from filing a timely petition." *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995); *see also Sullivan v. State*, 120 Nev. 537, 542 n.14, 96 P.3d 761, 765 n.14 (2004); *Hathaway v. State*, 119 Nev. 248, 254 n.13, 71 P.3d 503, 507 n.13 (2003). But even assuming that difficulties in obtaining a case file from previous defense counsel could constitute an impediment external to the defense,

we conclude that appellant failed to demonstrate that he was unduly prejudiced by the alleged error in this case.

The record demonstrates that appellant was charged with numerous felonies in multiple cases, he specifically told the trial court in this case that he did not want to take a plea bargain, and he insisted on proceeding to separate trials for each of his other cases. Based on this record, we conclude that the failure to consider whether defense counsel conveyed a plea offer would not work to appellant's actual and substantial disadvantage. Accordingly, we concur with the district court's good cause determination, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹Appellant also invites us to adopt the equitable tolling standard used by various federal courts. However, the Nevada Supreme Court has expressly "rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute's plain language requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 874 (2014). Because Nevada Supreme Court decisions are binding on this court, we decline appellant's invitation.

cc: Hon. Michael Villani, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk