

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE CLEVELAND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65910

**FILED**

DEC 10 2014

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying appellant David Lee Cleveland's post-conviction motion to withdraw his guilty plea. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

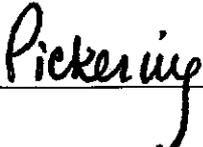
Cleveland contends that the district court erred by denying his post-conviction motion to withdraw his guilty plea without conducting an evidentiary hearing. Cleveland claims that he was entitled to the withdrawal of his guilty plea "in light of the district court's failure to conduct a pre-plea competency hearing . . . [and] previous counsel's failure to request a pre-plea competency hearing." We disagree.

Cleveland's motion challenged the validity of his judgment of conviction and is not incident to the proceedings in the trial court, therefore, we construe it as a post-conviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. \_\_\_, \_\_\_, 329 P.3d 619, 628 (2014). Cleveland filed his motion on January 9, 2014, nearly five and a half years after the entry of his amended judgment of conviction. Cleveland did not file a direct appeal. Cleveland's motion was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice. *See NRS 34.726(1)*.

The district court heard arguments from counsel and determined that an evidentiary hearing was not required because Cleveland's claim was not supported by the record. The district court noted that Cleveland "had been declared competent prior to entering his plea," and that his guilty plea was entered knowingly and voluntarily. The district court also found that the State was prejudiced by the delay in the filing of Cleveland's motion and that laches applied. Because of the absence of good cause and prejudice to overcome the procedural bars, and the further determination that Cleveland's motion lacked merit, we conclude that the district court did not err by denying his motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Robert W. Lane, District Judge  
Chesnoff & Schonfeld  
Nye County District Attorney  
Attorney General/Carson City  
Nye County Clerk