

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL OWENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66329

**FILED**

**JAN 21 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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 claims that the district court erred by dismissing his petition as procedurally barred. Appellant filed his petition on March 4, 2014, one and a half years after entry of the judgment of conviction on September 5, 2012. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See id.* Appellant claimed that good cause excused the untimely filing of his petition because his counsel did not file a direct appeal.<sup>1</sup> The district court found that


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<sup>1</sup>Appellant also asserts that good cause excused the untimely filing of the petition because counsel was not appointed to represent him until after the time for filing his petition had lapsed. This claim is improperly raised for the first time on appeal and we need not consider it. *See Merica v. State*, 87 Nev. 457, 462, 488 P.2d 1161, 1164 (1971). Further, when counsel was appointed does not constitute good cause to excuse any procedural defect because the record reveals that appellant did not file his  
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counsel's failure to file a direct appeal did not constitute good cause to excuse the untimely filing of the petition and appellant did not demonstrate that an impediment external to the defense prevented him from timely filing his petition. *See Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998). We conclude that the district court did not err in denying the petition as procedurally barred. *See State v. Huebler*, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012) (district court's findings on good cause are given deference, but the court's application of the law to the facts is reviewed *de novo*).<sup>2</sup> Therefore, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Michael Villani, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

\_\_\_\_\_  
*...continued*

motion seeking the appointment of counsel until after the time for filing his petition had already lapsed.

<sup>2</sup>Because we conclude the district court did not err by dismissing the petition as procedurally barred, we need not reach appellant's claim that the district court erred by failing to conduct an evidentiary hearing on the merits of his claims.