

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ORLANDO CRUZ-AYALA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66754  
**FILED**

FEB 24 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Williams*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and motion to modify sentence.<sup>1</sup> Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant filed his petition on August 14, 2014, more than three years after the entry of the judgment of conviction on May 24, 2011. 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 claimed he had good cause because he lacks understanding of the English language and of the law, and because he has to rely on inmate law clerks for legal help. Appellant's alleged language barrier did not provide good cause in this case as appellant has already

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<sup>1</sup>This 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).


filed several documents in the district court and he did not demonstrate that any language barrier prevented him from filing a petition over the entire length of the delay. *See Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006) (holding that federal equitable tolling principles require a non-English speaking petitioner to demonstrate during the time period that the petitioner was unable to procure either legal materials in his own language or translation assistance despite diligent efforts). Moreover, appellant's lack of legal knowledge and reliance upon inmate law clerks did not demonstrate that there was an impediment external to the defense that prevented him from complying with the procedural time bar. *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 assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition). Therefore, the district court did not err in denying the petition.

Next, appellant claimed that his sentence should be modified because another criminal defendant with similar crimes received a shorter sentence, he was discriminated against because of his culture, he has cooperated with state officials, he was only a low to moderate risk to reoffend, he has no prior criminal history, he has participated in programs while incarcerated, he has family support, and the presentence investigation report recommended a shorter sentence than the one he actually received. Appellant's claims fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we

conclude that the district court did not err in denying the motion.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Carolyn Ellsworth, District Judge  
Jose Orlando Cruz-Alaya  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk