

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMIE JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66872

**FILED**

**APR 15 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant Jeremie Johnson filed his petition on September 15, 2014, more than one year after entry of the judgment of conviction on November 30, 2012.<sup>2</sup> Thus, Johnson'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).

Johnson first claimed that he had cause to excuse his delay because he requested that his trial counsel file an appeal and he only learned in January 2013, that no appeal had been filed. The Nevada Supreme Court has held that an appeal-deprivation claim may in certain circumstances provide good cause to excuse the filing of an untimely petition. *See Hathaway v. State*, 119 Nev. 248, 253-54, 71 P.3d 503, 507

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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).

<sup>2</sup>No direct appeal was taken.

(2003). In order to demonstrate cause for the delay, a petitioner must demonstrate that he actually believed trial counsel had filed an appeal, that the belief was objectively reasonable, and that he had filed a post-conviction petition within a reasonable time after learning that no direct appeal had been filed. *Id.* at 255, 71 P.3d at 508.

Here, Johnson did not file his petition within a reasonable time after he allegedly learned that a direct appeal was not pending. Even assuming that Johnson only learned in January 2013, that there was no direct appeal pending, he waited more than a year and a half to file his petition. Such a delay was not reasonable. Thus, Johnson failed to demonstrate that this claim should provide cause for the delay.


Second, Johnson claimed that he had good cause because he did not have the trial transcripts and because his trial counsel would not give the case file to his mother due to attorney/client privilege. The Nevada Supreme Court has previously held that counsel's failure to send a petitioner his case files does not constitute good cause because it does not "prevent [the petitioner] from filing a timely petition." *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995); *see also Hathaway*, 119 Nev. at 254 n.13, 71 P.3d at 507 n.13 (2003).


Third, Johnson asserts he has good cause to overcome the procedural bars because the State withheld evidence relating to text messages and discussions Johnson had with the victim. When a claim alleging withheld exculpatory evidence is raised in an untimely post-conviction petition for a writ of habeas corpus, "establishing that the State withheld the evidence demonstrates that the delay was caused by an impediment external to the defense, and establishing that the evidence was material generally demonstrates that the petitioner would be unduly prejudiced if the petition is dismissed as untimely." *State v. Huebler*, 128

Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012). (footnote omitted) (citing *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003)).

Johnson failed to demonstrate that an impediment external to the defense prevented him from raising this claim in a timely manner. Johnson was personally aware of the text messages and was a party to the alleged discussion with the victim. Accordingly, Johnson failed to demonstrate that any evidence relating to the text messages or discussion was actually withheld.<sup>3</sup> Moreover, Johnson failed to demonstrate that this evidence would not have been available to him through diligent investigation by the defense. *See Huebler*, 128 Nev. at \_\_\_ n.11, 275 P.3d at 100 n.11 (citing *Steese v. State*, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998)). Even assuming that all of the text messages were not produced, Johnson failed to demonstrate a reasonable probability of a different outcome had this evidence been presented at trial. *See Bennett*, 119 Nev. at 599-600, 81 P.3d at 8. Therefore, the district court did not err in dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>3</sup>It appears from a review of the record that all text messages were admitted at trial.

cc: Hon. Jerome Polaha, District Judge  
Jeremie Johnson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk