

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 67076

FILED

OCT 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Billy Cepero filed his petition on June 24, 2014, almost four years after entry of the judgment of conviction on August 27, 2010.¹ Thus, Cepero'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).

First, Cepero argues he had good cause due to ineffective assistance of appellate and previous post-conviction counsel. Cepero fails to demonstrate good cause. A procedurally barred claim of ineffective assistance of appellate counsel cannot constitute cause for additional

¹Cepero's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Cepero v. State*, Docket No. 57061 (Order Dismissing Appeal, March 17, 2011). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

claims of ineffective assistance of counsel. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Cepero's claim of ineffective assistance of appellate counsel was procedurally barred because it was reasonably available to be raised in a timely petition, and therefore, did not constitute cause for this untimely petition.


In addition, Cepero was not entitled to the effective assistance of post-conviction counsel, *see McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996), and therefore, his claim of ineffective assistance of post-conviction counsel did not demonstrate good cause. *See Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014) (explaining post-conviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of post-conviction counsel was mandated by statute). Therefore, Cepero fails to demonstrate these claims constituted good cause.

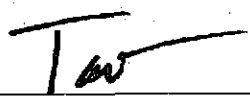
Second, Cepero argues federal equitable tolling standards should excuse the procedural bars and invites us to adopt those standards. However, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 "requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *See id.* at ___, 331 P.3d at 874. Therefore, Cepero did not demonstrate this claim constituted good cause.

Third, Cepero argues the district court erred in denying his petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Cepero did not raise claims which would have

entitled him to relief. Therefore, the district court did not err in denying the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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