

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 67440

**FILED**

NOV 19 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Jackie Owens filed his petition on December 27, 2013, nearly 33 years after issuance of the remittitur on direct appeal on January 6, 1981. *Owens v. State*, 96 Nev. 880, 620 P.2d 1236 (1980). Thus, Owens' petition was untimely filed.<sup>1</sup> See NRS 34.726(1). Owens' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Moreover, because the State specifically pleaded laches, Owens was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations, not belied by the record and, if true, would entitle him

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<sup>1</sup>The deadline for filing a habeas corpus petition pursuant to NRS 34.726 commenced on January 1, 1993, the date of the amendments to NRS chapter 34. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001). Owens' petition was filed nearly 20 years after the effective date of NRS 34.726.

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to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Owens claims he had good cause because his attorney abandoned him after filing his direct appeal in 1980. Owens fails to demonstrate good cause because he fails to demonstrate why this claim could not have been raised in an earlier petition and/or within a reasonable time of learning that his direct appeal had become final. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Further, former appellate counsel did not have a constitutional duty to inform Owens about the availability of postconviction remedies. See *id.* at 253, 71 P.3d at 506-07 (recognizing that good cause must be a legal excuse); see also *Miranda v. Castro*, 292 F.3d 1063, 1066-68 (9th Cir. 2002) (holding that equitable tolling was not warranted where a petitioner relied on incorrect advice of former counsel because petitioner had no right to the assistance of counsel regarding postconviction relief); *Moore v. Cockrell*, 313 F.3d 880, 882 (5th Cir. 2002) (holding that the right to counsel ends when the decision by the appellate court is entered).

Second, Owens claims he had good cause because he did not receive his file from his attorney until 1994. Again, Owens fails to demonstrate good cause because he fails to demonstrate why this claim could not have been raised in an earlier petition. See *Hathaway*, 119 Nev. at 252-53, 71 P.3d 503, 506.


Third, Owens argues this court should adopt federal equitable tolling 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.” *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 874 (2014).

Finally, Owens fails to overcome the rebuttable presumption of prejudice to the State. Therefore, for the foregoing reasons, we conclude the district court did not err by not holding an evidentiary hearing or denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Kenneth C. Cory, District Judge  
Oronoz & Ericsson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk