

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GASTON JOSEPH DANJOU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67821

FILED

DEC 18 2015

TECIE K. LINDEMAN
CLERK OF THE COURT
BY *[Signature]*
CHIEF 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; Susan Johnson, Judge.

Appellant Gaston Joseph Danjou filed his petition on November 12, 2013, more than one year after entry of the judgment of conviction on March 13, 2012.¹ Thus, Danjou'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).

Danjou argues he had good cause because he is of low intelligence, he only speaks limited English, and has no access to French-language legal material or French-speaking law clerks. Danjou fails to demonstrate his low intelligence is an impediment external to the defense which prevented him from complying with the procedural time bar. *See*

¹No direct appeal was taken.

generally *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 postconviction petition). In addition, Danjou's alleged language barrier does not provide good cause in this case as Danjou did not attempt to demonstrate he was unable to procure either legal materials in his own language or translation assistance during the timely filing period despite his diligent efforts. *See Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006); *see also Lewis v. Casey*, 518 U.S. 343, 351 (1996) ("an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense").


Second, Danjou argues he suffered actual prejudice because enforcement of the procedural time bar prevents him from litigating his substantive claims. Prejudice sufficient to overcome the procedural bars can be shown by demonstrating that the errors worked to a petitioner's actual and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993). Here, Danjou has only alleged the possibility of prejudice, which is insufficient to establish good cause to overcome the procedural time bar.

Third, Danjou argues federal equitable tolling standards should excuse the procedural time bar 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."

Brown v. McDaniel, 130 Nev. ___, ___, 331 P.3d 867, 874 (2014). Therefore the district court did not err in 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. Susan Johnson, District Judge
The Kice Law Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk