

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY EDWARD CARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68489

FILED

DEC 29 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.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Billy Carr filed his petition on April 28, 2015, more than 4 years after entry of the judgment of conviction on January 13, 2011.² Thus, Carr's petition was untimely filed. See NRS 34.726(1). Carr's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.*

Carr claimed he had good cause to overcome the procedural time bar because he was ignorant of the law and he did not have counsel to help him prepare his petition. Ignorance of the law is not an impediment external to the defense. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Further, the lack of postconviction counsel did not provide good cause because the


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

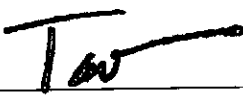
²No direct appeal was taken.

appointment of counsel is discretionary in postconviction proceedings. See NRS 34.750(1); see also *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Therefore, the district court did not err in denying this claim.

Carr also claimed he had good cause because the district court lacked jurisdiction to sentence him as a habitual criminal because the State improperly filed the notice of intent to seek habitual criminal enhancement and did not present certified copies of his prior convictions at sentencing. This claim did not implicate the jurisdiction of the district court, see Nev. Const. art. 6, § 6; NRS 171.010, and thus, did not provide good cause.³ Therefore, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³We note the State properly filed the notice of intent in the information and provided certified copies of the convictions to the district court at sentencing.

⁴We conclude the district court did not abuse its discretion by failing to appoint counsel in this case. See NRS 34.750(1).

We have reviewed all documents Carr has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Carr has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Susan Johnson, District Judge
Billy Edward Carr
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk