

VACATED PER ORDER FILED 10/10/16.


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCELL WILLIAMS,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 69861

**FILED**

SEP 20 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting the State's motion to dismiss a postconviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Marcell Williams claims the district court erred by dismissing his petition because it failed to consider the fact he was incarcerated in the Sacramento County Jail for eight months without access to his property and legal papers or an adequate law library and appropriate habeas petition forms. Williams further asserts an evidentiary hearing should have been held to determine just how much he was prejudiced and a hearing should have been held on his request for postconviction counsel.

Williams' June 2, 2015, petition was procedurally barred because it was filed more than a year after the entry of the judgment of

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

conviction on May 15, 2014.<sup>2</sup> See NRS 34.726(1). Consequently, Williams' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.*

Williams claimed in his petition to have good cause for the delay because he had several criminal cases pending in different counties and states and whenever he was moved from one jail to another his legal paperwork was taken from him and not returned. Williams also claimed a correctional officer gave him different information on two occasions and he had to search for answers through alternative means causing a greater delay in filing his petition.

Williams also claimed in his opposition to the State's motion to dismiss his petition that he had good cause for the delay. Williams asserted the Nevada Department of Corrections prevented him from taking his legal documents and materials with him when he was transferred to the Sacramento County Jail and argued he was unable to file a meaningful habeas petition without being able to reference the documents and provide supporting evidence. Williams further claimed he did not have access to a law library with Nevada law.

Williams failed to meet his burden of pleading and proving specific facts that demonstrate good cause for the delay. See *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003). Williams did not demonstrate the eight months he spent in the Sacramento County Jail without access to his legal papers and an adequate law library prevented him from filing a petition within the one year statutory period. Nor did


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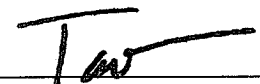
<sup>2</sup>Williams' direct appeal was dismissed for lack of jurisdiction because the notice of appeal was not timely filed. *Williams v. State*, Docket No. 65968 (Order Dismissing Appeal, July 25, 2014).

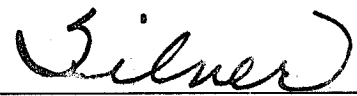
Williams explain how a correctional officer's inconsistent information interfered with his ability to file a timely petition. Accordingly, Williams failed to "show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

We conclude the district court did not err by summarily dismissing Williams' petition without appointing counsel or conducting an evidentiary hearing, *see* NRS 34.750(1); NRS 34.770(2), and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Patrick Flanagan, District Judge  
Marcell Williams  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>3</sup>In light of our decision, we deny Williams' motion for an en banc, omnibus, or full hearing filed on June 21, 2016.