

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORNELIUS ALFRED GAINES, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69321

FILED

JAN 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Cornelius Alfred Gaines, III appeals from a district court order denying his postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.


Gaines filed his petition on June 30, 2015, one year and six days after issuance of the remittitur on direct appeal on June 24, 2014. *See Gaines, III v. State*, Docket No. 59892 (Order of Affirmance, May 30, 2014). Thus, Gaines' petition was untimely filed. *See* NRS 34.726(1). Gaines' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

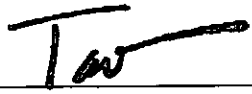
Gaines asserted he had good cause to excuse the procedural defect because official interference prevented the timely filing of his petition. He stated he gave his petition to prison officials for mailing on June 21, 2015, three days before the petition was due to be filed. He

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).

claimed this was ample time to have the petition delivered to the district court and filed and it was only due to delay caused by prison officials that his petition was not timely filed. The district court found Gaines failed to demonstrate the late filing of the petition was due to official interference and therefore he failed to demonstrate an impediment external to the defense caused the delay in filing the petition. We conclude the district court did not err by finding Gaines failed to demonstrate good cause to excuse the procedural defect and dismissing the petition as procedurally barred. *See Gonzales v. State*, 118 Nev. 590, 53 P.3d 901 (2002).² We further conclude the district court did not err by denying Gaines' request for an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Cornelius Alfred Gaines, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Gaines asserts the rejection of the prison mailbox rule in *Gonzales* was improper and should be overruled because it conflicts with the legislative provisions NRS 34.726(1), we disagree.