

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN CARLOS MALDONADO-MEJIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68858

FILED

AUG 17 2016

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; Joseph T. Bonaventure, Senior Judge.

Appellant Juan Maldonado-Mejia filed his petition on June 20, 2014, more than one year after issuance of the remittitur on direct appeal on June 11, 2013. Thus, Maldonado-Mejia's petition was untimely filed. *See* NRS 34.726(1). Maldonado-Mejia's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Maldonado-Mejia acknowledges his petition was not timely filed but argues he has good cause to excuse the timely filing because his counsel missed the deadline and her error should not be imputed to him. He also asserts that allowing the filing of a slightly untimely petition does not threaten the efficiency of the courts or run afoul of the Legislature's intent in passing NRS 34.726.

16-900974


NRS 34.726 requires “a petitioner [to] show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). This language contemplates the delay in filing a petition must be caused by a circumstance outside the actual control of the defense team as a whole, not solely outside the petitioner’s control. Counsel’s miscalendaring of the date by which the petition had to be filed is not an impediment external to the defense. Further, even if filing a slightly untimely petition would not run afoul of the Legislature’s intent in passing NRS 34.726, this does not establish that an impediment external to the defense caused the untimely filing, and application of the procedural bars is mandatory, *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). We conclude the district court did not err by finding counsel’s error did not provide good cause to overcome the procedural bar.

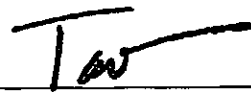
Maldonado-Mejia also claims it would be a fundamental miscarriage of justice if his petition is not considered on the merits. Maldonado-Mejia failed to raise the claim below in the district court and we decline to consider it for the first time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

Finally, because Maldonado-Mejia failed to demonstrate good cause to overcome the procedural bar we conclude the district court did not err by failing to address his actual prejudice claim. We conclude 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

cc: Chief Judge, Eighth Judicial District Court  
Hon. Joseph T. Bonaventure, Senior Judge  
Law Office of Lisa Rasmussen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk