

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALD KEITH TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71591

FILED

AUG 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gerald Keith Taylor appeals from an order of the district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Taylor filed his petition on October 28, 2015, more than a year after entry of the judgment of conviction on August 7, 2014, and no direct appeal was taken. Taylor's petition was therefore untimely filed and procedurally barred absent a demonstration of cause for the delay and undue prejudice. *See* NRS 34.726(1). The district court's order made note of the relevant dates and the State's argument that the petition was untimely. However, the order addressed the claims on the merits rather than addressing the procedural bar despite its application being mandatory. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). We nevertheless affirm the district court's denial of Taylor's petition because the petition was procedurally barred. *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

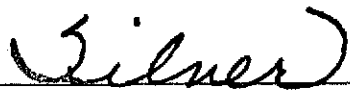
Taylor argues he has good cause to overcome the procedural time bar. To show good cause, Taylor must demonstrate an impediment external to the defense prevented him from filing a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).


Taylor claims he has good cause because he has diligently tried to pursue a postconviction remedy since May 2015, he needed an attorney to adequately argue his underlying claims, and the district court extended the time to file his petition. Taylor's "need" for counsel does not constitute good cause as the appointment of counsel in this matter was not statutorily or constitutionally mandated. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014); see also NRS 34.750 (providing for the discretionary appointment of postconviction counsel in noncapital cases). Further, Taylor filed a May 2015 motion to dismiss his counsel and a July 2015 motion to appoint postconviction counsel, which suggests he was not prevented by external forces from filing a timely postconviction petition. Finally, application of the procedural bars is mandatory, and a district court lacks authority to extend the time to file a postconviction petition. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); cf. *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003) ("[T]he parties in a post-conviction habeas proceeding cannot stipulate to disregard the statutory procedural default rules.").


Because Taylor has not alleged any external force prevented him from filing a timely petition, he has not demonstrated he was entitled to have his petition heard on the merits. Cf. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding petitioner is not entitled to an evidentiary hearing where his claims are unsupported by specific factual

allegations that, if true, would have entitled him to relief). Accordingly,
we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Harper Selim
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Even had Taylor been able to demonstrate good cause to overcome the procedural bar, our review of his claims on the merits would have been impeded by his failure to file an adequate appendix, which is missing important documents, including a transcript of the guilty plea hearing. See NRAP 30(b); *Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing appellate court with portions of the record necessary to resolve claims on appeal); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”).