

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72049

FILED

DEC 14 2017

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

ORDER OF AFFIRMANCE

Gary Marion Costa-Ayres appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on September 8, 2016.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

In his petition, Costa-Ayres sought 170 days' credit for time spent in presentence confinement. The district court determined Costa-Ayres spent the 170 days in presentence confinement for another case and was not entitled to additional presentence credit in this case. We conclude the district court erred in reaching the merits of Costa-Ayres' claim but reached the correct result by denying his petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

A claim for presentence credit is a challenge to the validity of the judgment of conviction and sentence, which is subject to the procedural requirements of NRS chapter 34. *Griffin v. State*, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006). Costa-Ayres filed his petition more than one year


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

after the entry of the judgment of conviction on October 15, 2014.² Therefore, his petition was untimely and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1); *Griffin*, 122 Nev. at 744, 137 P.3d at 1169. In an attempt to show good cause, he claimed to have recently learned no presentence-credit days were applied to his sentence.

We conclude Costa-Ayres failed to demonstrate an impediment external to the defense prevented him from raising this claim in a timely habeas petition. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2006). Therefore, his petition was procedurally barred and should have been denied as such. See NRS 34.726(1); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Because the district court reached the correct result by denying the petition, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Gary Marion Costa-Ayres
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

²No direct appeal was taken.