

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSUALDO GARCIA, A/K/A OSVALDO
GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72908

FILED

DEC 29 2017

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

ORDER OF AFFIRMANCE

Oswaldo Garcia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Garcia filed his petition on December 29, 2016, more than 26 years after entry of the judgment of conviction on March 7, 1990.² Thus, Garcia's petition was untimely filed.³ See NRS 34.726(1). Garcia's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Moreover, because the State specifically pleaded laches, Garcia was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

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

²Garcia did not pursue a direct appeal.


³Garcia's petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

In his petition, Garcia claimed he had cause for his delay because he lacks legal training and resources. The district court concluded these issues did not constitute an impediment external to the defense that prevented Garcia from complying with the procedural bars. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition).

On appeal, Garcia does not attempt to argue he had cause for his delay. Garcia also failed to overcome the rebuttable presumption of prejudice to the State because he did not demonstrate he suffered from a fundamental miscarriage of justice. *See* NRS. 34.800(1)(b). Therefore, 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.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Oswaldo Garcia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk