

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT CLAYTON BASS, II,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72591

**FILED**

MAR 14 2018

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

*ORDER OF AFFIRMANCE*

Robert Clayton Bass, II, appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on February 6, 2013, and the supplemental petition he filed on December 10, 2015. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Bass filed his petition more than two years after entry of the judgment of conviction on December 14, 2010.<sup>1</sup> Thus, Bass' petition was untimely filed. *See* NRS 34.726(1). Bass' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Bass argues the district court erred by denying his good cause claims.

First, Bass argued he had good cause to overcome the procedural bars because he asked counsel to file an appeal on his behalf and counsel failed to do so. It appears from the record Bass asked for or at least mentioned an appeal to counsel. However, Bass never alleged he believed counsel filed an appeal on his behalf and he filed the instant petition within a reasonable time of finding out counsel did not file an appeal. *See*

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<sup>1</sup>Bass did not appeal from his judgment of conviction.

*Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, Bass failed to support this claim with specific facts that, if true, entitled him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 252 (1984). Accordingly, we conclude the district court did not err by denying this claim.

Second, Bass argued he had good cause because counsel never provided his case file to him. Bass failed to demonstrate good cause. The Nevada Supreme Court has previously held counsel's failure to send a petitioner his case file does not constitute good cause because it does not "prevent [the petitioner] from filing a timely petition." *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Therefore, we conclude the district court did not err by denying this claim.


Third, Bass argued he had good cause because counsel never informed him counsel had withdrawn from his case. Bass failed to demonstrate good cause. According to his petition, Bass began requesting his file from counsel a year-and-a-half prior to filing the instant petition. Therefore, it appears Bass knew counsel was no longer representing him. Further, Bass would not have been prevented from filing a postconviction petition for a writ of habeas corpus even if he believed counsel was still representing him. *See* NRS 34.724(2)(a) (providing a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing the clerk of the district court shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Groesbeck v. Warden*, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984) (recognizing a postconviction habeas corpus petition is a petition seeking collateral review). Therefore, we conclude the district court did not err by denying this claim.

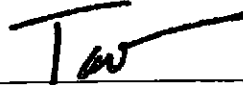
Fourth, Bass argued his history of mental illness provided good cause. This claim did not provide good cause to overcome the procedural

bars because Bass failed to demonstrate there was an impediment external to the defense preventing him from raising his claims in a timely petition. See *Phelps v. Director, Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation, and reliance of the assistance of an inmate law clerk unschooled in the law did not constitute good cause). Further, Bass failed to support this claim with specific facts that, if true, would entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, we conclude the district court did not err by denying this claim.

Finally, Bass claims the district court erred by denying his petition without first holding an evidentiary hearing. We conclude the district court did not err by denying the petition as procedurally barred without holding an evidentiary hearing on his good cause claims or his underlying claims. See *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William D. Kephart, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk