

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE M. RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73960

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose M. Rodriguez 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; Kathleen E. Delaney, Judge.

Rodriguez filed his petition on June 27, 2017, almost 26 years after issuance of the remittitur on direct appeal on July 16, 1991. *Rodriguez v. State*, 107 Nev. 432, 813 P.2d 992 (1991). Thus, Rodriguez' petition was untimely filed.² See NRS 34.726(1). Rodriguez' 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

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

²The district court entered an amended judgment of conviction on August 22, 1991. Rodriguez did not raise claims stemming from the entry of the amended judgment of conviction. Thus, entry of the amended judgment of conviction did not affect the timely-filing date for Rodriguez' postconviction petition. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Rodriguez' 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).

laches, Rodriguez was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).


First, Rodriguez argued he had cause for the delay because he lacked legal knowledge, did not understand he could challenge his conviction through a postconviction petition for a writ of habeas corpus, and is not proficient in the English language. Rodriguez' limited legal knowledge was not an impediment external to the defense which prevented him from complying with the procedural bars. Cf. *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 an inmate law clerk unschooled in the law did not constitute good cause for filing a successive postconviction petition). In addition, Rodriguez' language barrier did not provide cause for the delay in this case as Rodriguez previously filed multiple documents in the district court in English and he did not attempt to demonstrate he was unable to procure legal materials in his own language or translation assistance during the timely filing period despite his diligent efforts. See *Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006).


Second, Rodriguez claimed he had cause for the delay because he was released on parole in 1997 and then deported. Rodriguez asserted the deportation deprived him of the ability to challenge his conviction and he was only able to pursue postconviction relief following his recent arrest for violating his parole conditions. Rodriguez' challenges to his conviction were reasonably available to be raised in a timely petition and Rodriguez did not explain how his deportation years after the expiration of his timely-filing deadline amounted to an impediment external to the defense that


prevented him from filing a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Third, Rodriguez did not overcome the presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Jose Manuel Rodriguez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk