

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID JAMES GALINDO-CLOUD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73727

FILED

JUN 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

David James Galindo-Cloud appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 12, 2015, and supplemental petition filed on December 12, 2016. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Galindo-Cloud filed his petition more than four years after entry of the judgment of conviction on September 9, 2011. No direct appeal was taken.¹ Galindo-Cloud's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

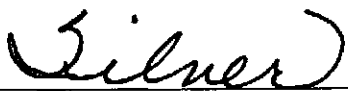
Galindo-Cloud contends he had good cause because he was mentally incompetent at the time he entered his guilty plea. Good cause must be “an impediment external to the defense” that prevented him from


¹Galindo-Cloud's probation was revoked pursuant to an order filed December 2, 2014, and this court affirmed the revocation. *See Galindo-Cloud v. State*, Docket No. 67152 (Order of Affirmance, June 16, 2015). None of the claims raised in Galindo-Cloud's petition touch on the revocation. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

complying with the time bar. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). And “a claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay.” *Id.* at 253; 71 P.3d at 506. Galindo-Cloud’s mental health issues were not external to the defense and thus could not demonstrate good cause. See *Phelps v. Dir., Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). And even if they were, Galindo-Cloud admitted he was deemed competent by a doctor in February 2012 and the district court found him competent in March 2012. Galindo-Cloud has not attempted to explain why he could not have filed his petition before the September 2012 deadline.

Galindo-Cloud also asks this court to adopt equitable tolling of the procedural time-bar. The Nevada Supreme Court has explicitly rejected equitable tolling of the procedural bar. See *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 874 (2014). We therefore conclude the district court did not err by denying Galindo-Cloud’s petition as procedurally time-barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk