

IN THE COURT OF APPEALS OF THE STATE OF NEVADA.

VINCENT ARTHUR MOLINSKI, A/K/A
VINCENT JAMES REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73966

FILED

JUL 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Vincent Arthur Molinski appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on May 16, 2017.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Molinski improperly challenged both the validity of his judgment of conviction and the computation of the time served in the same petition. *See* NRS 34.738(3). As required by NRS 34.738(3), the district court resolved the portion of the petition that challenged the judgment of conviction and dismissed the remainder of the petition without prejudice.

Molinski filed his petition nearly nine years after the judgment of conviction was entered on May 19, 2008²; consequently, it was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). Moreover, because

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

²No direct appeal was taken.

12-901555

the State specifically pleaded laches, Molinski was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).


First, Molinski argued he had good cause to excuse the procedural defects to his petition because he only recently learned that the life expectancy of an inmate was significantly lower than the life expectancy of an average United States male. However, Molinski's lack of knowledge about the life expectancies of prisoners did not constitute an impediment external to the defense that prevented him from complying with the procedural default rules. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2006) ("In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules."). Therefore, the district court did not err in rejecting this good-cause argument.

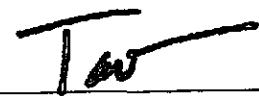
Second, Molinski argued he had good cause to excuse the procedural defects to his petition because the Nevada Department of Corrections has refused to allow him to participate in employment or programs to reduce his term of incarceration due to an error which occurred when the Las Vegas Metropolitan Police Department booked him under the alias "Molinski, Vincent" instead of the name "Reed, Vincent." However, Molinski failed to explain why it took him nearly nine years to raise this alleged error. See *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (petitioner bears the burden of pleading and proving specific facts that establish good cause and prejudice to overcome the procedural bars). Therefore, the district court did not err in rejecting this good cause argument.

Molinski did not attempt to rebut the presumption of prejudice to the State. See NRS 34.800(2). We conclude the district court did not err

by dismissing Molinski's challenge to the validity of his judgment of conviction and properly dismissed Molinski's challenge to the computation of time served without prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Vincent Arthur Molinski
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

³We also conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See* NRS 34.750(1); *Renteria-Nova v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).