

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 74977-COA

**FILED**

NOV 06 2018

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

*ORDER OF AFFIRMANCE*

Jose Manuel Rodriguez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on October 16, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Rodriguez' petition was filed more than 26 years after the remittitur on direct appeal was issued on July 16, 1991;<sup>2</sup> 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).

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

<sup>2</sup>*See Rodriguez v. State*, 107 Nev. 432, 813 P.2d 992 (1991).


We note Rodriguez did not raise claims relating to the amended judgment of conviction the district court entered on August 22, 1991; therefore, the entry of the amended judgment of conviction did not affect the due date for filing a timely postconviction habeas 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).

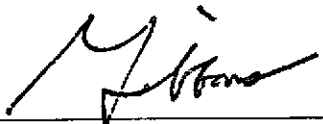
Rodriguez appears to claim he had good cause because the district court appointed counsel to assist him with his first postconviction habeas petition and counsel provided ineffective assistance during an August 23, 2017, hearing held on that petition. The record does not demonstrate the district court appointed postconviction counsel. However, even assuming counsel was appointed, Rodriguez did not have a constitutional or statutory right to postconviction counsel and therefore ineffective assistance of postconviction counsel did not provide good cause to excuse the procedural bar. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014).

We conclude the district court did not err by denying Rodriguez' petition as procedurally barred,<sup>3</sup> see NRS 34.726(1); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory), and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>3</sup>Although the district court reached the correct result, it erred by finding this petition was successive because Rodriguez' first petition was not decided on the merits. See NRS 34.810(2); *Rodriguez v. State*, Docket No. 73960 (Order of Affirmance, May 15, 2018); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

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