

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74969

FILED

OCT 25 2018

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

ORDER OF AFFIRMANCE

Antonio Chavez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 12, 2017.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Chavez filed his petition more than one year after issuance of the remittitur on direct appeal on August 22, 2016.² Chavez' 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); *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding the time for filing a postconviction habeas petition begins with the *issuance* of the remittitur). Good cause requires that “an impediment external to the defense” prevented the petitioner from filing a timely petition. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).


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


²*See Chavez v. State*, Docket No. 69360 (Order of Affirmance, July 27, 2016).

Chavez did not argue below that he had good cause. To the extent Chavez relied on counsel's misinformation as to the timeframe in which he had to file the instant petition, such misinformation is not an impediment external to the defense. *Cf. id.* at 253, 71 P.3d at 507 (stating "that the petitioner received misinformation about the right to appeal" does not constitute good cause). Moreover, Chavez could not have demonstrated prejudice, because his bare claim for relief would not have entitled him to relief.³ *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding claims must be supported by specific factual allegations that, if true and not belied by the record, would entitle petitioner to relief). We therefore conclude the district court did not err by denying Chavez' petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³For this reason, the filing of the amended judgment of conviction on February 3, 2017, and/or second amended judgment of conviction on August 18, 2017, did not constitute good cause to overcome the procedural time bar. *See Sullivan v. State*, 120 Nev. 537, 540, 96 P.3d 761, 764 (2004).

⁴We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See NRS 34.750(1); Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

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