

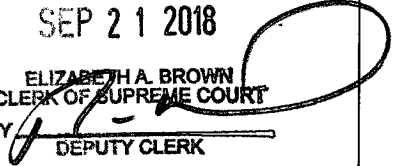
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

J.D. CALDWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74745

FILED

SEP 21 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

J.D. Caldwell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Caldwell filed his petition on August 31, 2017, more than four years after entry of the judgment of conviction on October 10, 2012.<sup>2</sup> Thus, Caldwell's petition was untimely filed. *See* NRS 34.726(1). Caldwell's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Caldwell claimed he had cause for his delay because his trial-level counsel failed to ensure he received the appropriate amount of presentence credits. Caldwell also claimed he had cause for the delay because the district court considered his 2013 motion for presentence credits and did not force him to pursue that claim through a postconviction petition for a writ of habeas corpus. Caldwell failed to demonstrate cause

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

<sup>2</sup>Caldwell did not pursue a direct appeal.

for his delay. This claim failed to demonstrate an impediment external to the defense prevented Caldwell from complying with the procedural bar. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Caldwell's claim of ineffective assistance of counsel was reasonably available to be raised in a timely manner and, therefore, cannot constitute cause to excuse his delay. *See id.* at 252, 71 P.3d at 506 (“[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.”). In addition, Caldwell sought additional presentence credits in his 2013, motion and, thus, he did not demonstrate that the factual or legal basis for this claim was not reasonably available to be raised in a timely-filed petition. *See id.* Therefore, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Susan Johnson, District Judge  
J.D. Caldwell  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk