

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MALCOLM DENZEL MANNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73666

FILED

SEP 11 2018

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

ORDER OF AFFIRMANCE

Malcolm Denzel Manning appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.


Manning filed his petition on December 6, 2016, more than one year after issuance of the remittitur on direct appeal on December 1, 2015. *Manning v. State*, 131 Nev. 206, 348 P.3d 1015 (2015). Thus, Manning's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1); *Gonzales v. State*, 118 Nev. 590, 595-96, 53 P.3d 901, 904 (2002) (holding that a petition filed a few days late was untimely). “Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).


Manning did not attempt to provide cause for the delay. Accordingly, Manning failed to meet his burden to overcome the procedural


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

bar. See NRS 34.726(1) (explaining the petitioner has the burden to demonstrate cause for the delay); *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Therefore, the district court did not err in denying the petition.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We 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).

³The district court declined to apply the procedural time bar because the petition was filed shortly after the expiration of the one-year deadline, and then denied the petition on the merits. However, a postconviction petition for a writ of habeas corpus “must be filed with the appropriate district court within the applicable time period set forth in NRS 34.726(1),” *Gonzales*, 118 Nev. at 595, 53 P.3d at 904, and the district court should have denied the petition pursuant to the procedural time bar. Nevertheless, the district court properly denied relief, and we therefore affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (“If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.”).

cc: Hon. Tierra Danielle Jones, District Judge
Malcolm Denzel Manning
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk