

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL MCDARIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73941

FILED

AUG 14 2018

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

ORDER OF AFFIRMANCE

Daniel McDaris appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 5, 2017.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

McDaris challenged the validity of his guilty plea, claiming the district court did not inform him that he would be ineligible for parole if he were deemed a high risk to reoffend. McDaris filed his petition more than 14 years after entry of the judgment of conviction on January 30, 2003. No direct appeal was taken. McDaris' 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). Further, because the State specifically pleaded laches, McDaris was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

McDaris first claimed he was not subject to the procedural bars of NRS chapter 34 because his pleading was titled as a motion to withdraw

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).

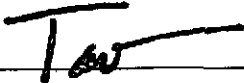
his guilty plea and, if it were construed as anything else, it should be a motion to correct an illegal sentence. McDaris' pleading challenged the validity of his guilty plea and, thus, his judgment of conviction. Such a claim can only be raised in a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b); *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014).


McDaris also claimed he had good cause to excuse his delay because he did not learn that his status as a "high" risk to reoffend would preclude parole until after his parole hearing. However, McDaris did not specify when his parole hearing was or when he learned this information. Accordingly, he failed to allege specific facts to demonstrate cause for the delay. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (holding a good-cause claim must not itself be procedurally barred). He also failed to demonstrate prejudice since the district court did not have a duty to advise him of his potential parole ineligibility. See *Little v. Warden*, 117 Nev. 845, 849 n.9, 34 P.3d 540 543 n.9 (2001). Finally, McDaris failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Daniel McDaris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk