

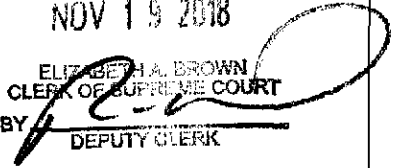
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT LOGAN BERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74936-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Logan Berry appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 2, 2017.¹ Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Berry filed his petition nearly two years after issuance of the remittitur on direct appeal on November 13, 2015. *See Berry v. State*, Docket No. 66225 (Order of Affirmance, October 19, 2015). Berry's 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); NRAP 4(c)(5). Berry made no attempt to demonstrate good cause. We therefore conclude the district court did not err by denying Berry's petition as procedurally barred.

¹Although Berry entitled his filing a "motion for modification of sentence," the claim therein challenged the validity of his conviction, and the district court accordingly construed it as a postconviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(c).

This 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).

18-904682

To the extent Berry intended his filing to be considered only as a motion for modification of sentence, he was not entitled to relief. His claim was outside the scope of a motion for modification where he failed to allege that the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Thomas L. Stockard, District Judge
Robert Logan Berry
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

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).