

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER LOUIS DYER, A/K/A PERCY
LOUIS DYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74971-COA

FILED

JAN 25 2019

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

ORDER OF AFFIRMANCE

Peter Louis Dyer 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; Elissa F. Cadish, Judge.

Dyer filed his petition 34 years after issuance of the remittitur on direct appeal on September 7, 1983, *see Dyer v. State*, 99 Nev. 422, 663 P.2d 699 (1983), and more than 24 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippon v. State*, 134 Nev. ___, ___ n.12, 423 P.3d 1084, 1097 n.12 (2018). Dyer's petition was therefore untimely filed. *See* NRS 34.726(1). Dyer's petition was also successive and an abuse of the writ.² *See* NRS

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

²*See Dyer v. State*, Docket No. 34101 (Order of Affirmance, April 4, 2001); *Dyer v. State*, Docket No. 17954 (Order Dismissing Appeal, March 28, 1987).


34.810(1)(b)(2); NRS 34.810(2). Dyer's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Dyer was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

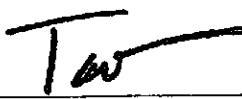
Dyer claimed the United States Supreme Court's decisions in *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), provided good cause to excuse his procedural bars. *Welch* was decided in April 2016 and *Montgomery* in January 2016, and Dyer's petition was not filed within a reasonable time of either decision. *See Rippo v. State*, 134 Nev. ___, ___, 423 P.3d 1084, 1097 (2018) (holding a good cause argument must be raised within a year of when the claim becomes available). Dyer claimed he was delayed in raising the good-cause argument because prison law-library practices prevented his learning of *Welch* until August 2016. Yet Dyer still waited more than a year to file his petition, and he failed to explain how an impediment external to the defense explained this delay. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a petitioner's lack of legal knowledge does not excuse a delay). Dyer thus failed to demonstrate good cause to excuse his entire delay. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506 (“[A]n adequate allegation of good cause would sufficiently explain why a petition was filed beyond the statutory time period.”).

Finally, we 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. 75, 76, 391 P.3d 760, 760-61 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Peter Louis Dyer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Dyer sought reconsideration below of the district court's order on the ground, in part, that the district court failed to afford him the statutorily mandated opportunity to respond to the State's request to dismiss the petition as procedurally barred. *See* NRS 34.800(2). Although the district court orally denied Dyer's petition before his time to reply had run, *see* NRS 34.750(4), we note that Dyer did not attempt to file a timely reply. Accordingly, Dyer is not entitled to relief on this basis.