

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAZ HIGGS,
Appellant,
vs.
ISIDRO BACA, WARDEN NNCC,
Respondent.

No. 75582-COA

FILED

MAR 20 2019

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

ORDER OF AFFIRMANCE

Chaz Higgs appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 8, 2018.¹ Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Higgs filed his petition 8 years after issuance of the remittitur on direct appeal on February 9, 2010. *See Higgs v. State*, 126 Nev. 1, 222 P.3d 648 (2010). Thus, Higgs' petition was untimely filed. *See* NRS 34.726(1). Higgs' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Higgs claimed he had good cause to excuse the procedural bar because trial and appellate counsel failed to inform him of his state postconviction remedies. Higgs failed to demonstrate good cause because trial and appellate counsel did not have a constitutional duty to inform him about the availability of postconviction remedies. *See Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506-07 (2003) (recognizing that good cause

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).

must be a legal excuse); *see also Moore v. Cockrell*, 313 F.3d 880, 882 (5th Cir. 2002) (holding the right to counsel ends when the decision by the appellate court is entered); *Miranda v. Castro*, 292 F.3d 1063, 1066-68 (9th Cir. 2002) (holding that equitable tolling was not warranted where a petitioner relied on incorrect advice of former counsel because petitioner had no right to the assistance of counsel regarding postconviction relief). Accordingly, we conclude the district court did not err by denying Higgs' petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.²



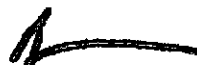
Tao

J.



Gibbons

J.



Bulla

J.

cc: Hon. Barry L. Breslow, District Judge
Chaz Higgs
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court 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. 75, 76, 391 P.3d 760, 760-61 (2017).