

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73307

**FILED**

MAY 22 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kevin Marquette Gipson appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 20, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Gipson improperly challenged both the validity of his judgment of conviction and the computation of the time he had served in the same petition. *See* NRS 34.738(3). As required by NRS 34.738(3), the district court resolved the portion of the petition that challenged the judgment of conviction and dismissed the remainder of the petition without prejudice.

Gipson's petition was filed nearly five years after the judgment of conviction was entered on March 13, 2012; consequently, it was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice.<sup>2</sup> *See* NRS 34.726(1). In an attempt to excuse his procedural default, Gipson argued the district court should reach the merits of this petition because it reached the merits of his previous

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<sup>1</sup>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).

<sup>2</sup>No timely direct appeal was taken.


untimely-filed petition, he was not being assisted by postconviction counsel, he is uneducated, and he has documented mental health problems.


We conclude Gipson failed to demonstrate good cause because the district court erred when it reached the merits of his previous petition. *See Gipson v. State*, Docket No. 69174 (Order of Affirmance, December 28, 2016); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory). Gipson was not entitled to postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). And Gipson's limited education and mental health problems do not provide good cause to excuse the procedural bar. *See Phelps v. Director, Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).

For the foregoing reasons, we conclude the district court did not err by denying Gipson's challenge to the validity of his judgment of conviction and properly dismissed Gipson's challenge to the computation of time served without prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William D. Kephart, District Judge  
Kevin Marquette Gipson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk