

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANNY RAY SHAW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71791

FILED

OCT 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Danny Ray Shaw appeals from an order of the district court dismissing the postconviction petition for a writ of habeas corpus he filed on December 11, 2015, and the supplement he filed on May 16, 2016. First Judicial District Court, Carson City; James Todd Russell, Judge.

Shaw filed his petition more than nine years after entry of the judgment of conviction on July 28, 2006.¹ Thus, Shaw's petition was untimely filed. *See* NRS 34.726(1). Shaw's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Shaw claims the district court erred by denying his good cause claims without holding an evidentiary hearing.

First, Shaw claimed he had good cause because counsel was ineffective for failing to inform him he had the right to appeal and counsel failed to provide him with his entire case file. These claims failed to provide good cause to overcome the procedural bar because these claims could have been raised in a timely postconviction petition and Shaw failed to demonstrate cause for the entire length of his delay. *See Hathaway v. State,*

¹No direct appeal was taken.


119 Nev. 248, 71 P.3d 503 (2003). Shaw knew at the time he was convicted counsel was not going to file an appeal on his behalf. Further, Shaw waited nearly seven years before requesting his file from counsel. Therefore, the district court did not err by denying these claims without holding an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (to warrant an evidentiary hearing, a petitioner must support his claim with specific facts that, if true, would entitle him to relief).


Second, Shaw claimed he had good cause because he was young and inexperienced with legal procedures when he was convicted. This claim failed to provide good cause to overcome the procedural bar because he failed to demonstrate an impediment external to the defense kept him from filing a timely postconviction petition. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation, and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for filing a successive postconviction petition). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Finally, Shaw claimed he had good cause because he only had limited access to materials in the law library. Shaw failed to demonstrate an inadequate law library deprived him of meaningful access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 828 (1977), *limited by Lewis v. Casey*, 518 U.S. 343, 354-56 (1996). Shaw did not provide any factual basis to support his claim or explain why access to the library was necessary for him to comply with the procedural time bar. Bare claims, such as this one, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not

err by denying this claim without holding an evidentiary hearing. *See id.* Accordingly, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk