

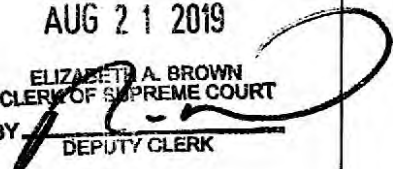
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SIDNEY EARL CARTHEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76174-COA

**FILED**

AUG 21 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Sidney Earl Carthen appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Carthen filed his petition on August 15, 2017, more than five years after entry of the judgment of conviction on October 18, 2011.<sup>1</sup> Thus, Carthen's petition was untimely filed. *See* NRS 34.726(1). Carthen's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

In his petition, Carthen asserted his probation was improperly revoked and he had earned enough probationary credits that he should have been discharged from probation prior to his probation revocation hearing. To demonstrate cause for the delay, "a petitioner must show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 251, 271 P.3d 503, 506 (2003). One year provides sufficient time to present a

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<sup>1</sup>Carthen did not pursue a direct appeal.

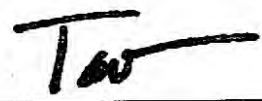
claim that was not factually or legally available at the time of the procedural default. *Rippo v. State*, 134 Nev. 411, 421-22, 423 P.3d 1084, 1097 (2018).

Carthen's probation was revoked on March 27, 2015, and he did not provide any explanation concerning why he waited more than two years to raise a claim concerning the revocation of his probation. Accordingly, Carthen failed to demonstrate cause for his delay.

To the extent Carthen also challenged his judgment of conviction, he did not attempt to demonstrate cause for his delay. Therefore, the district court did not err by dismissing the petition as procedurally barred.

Having concluded Carthen is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Elliott A. Sattler, District Judge  
Sidney Earl Carthen  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk