

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN WAYNE MUNDO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70644

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Jonathan Mundo appeals from an order of the district court denying his postconviction petition for a writ of habeas corpus filed on March 8, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Mundo filed his petition nearly three years after entry of the judgment of conviction on July 18, 2013.<sup>2</sup> Thus, Mundo's petition was untimely filed. *See* NRS 34.726(1). Mundo's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

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

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


Mundo argues the district court erred by denying his claim he had good cause to overcome the procedural bar because counsel failed to provide him with his case file, and therefore, he is entitled to equitable tolling. We conclude Mundo failed to demonstrate the district court erred by finding Mundo failed to demonstrate good cause. The Nevada Supreme Court has previously held counsel's failure to send a petitioner his case file does not constitute good cause because it does not "prevent [the petitioner] from filing a timely petition." *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995); *see also Hathaway v. State*, 119 Nev. 248, 254 n.13, 71 P.3d 503, 507 n.13 (2003) (stating "trial counsel's failure to send a petitioner his or her file does not constitute good cause to excuse a procedural default"). Further, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 "requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 874 (2014).

We also conclude Mundo failed to demonstrate undue prejudice. Mundo claimed the State violated the Interstate Agreement on Detainers Act, the State failed to provide sufficient evidence he possessed a deadly weapon, and the State violated his Fourth Amendment rights. These claims were outside the scope of a postconviction petition for a writ of habeas corpus based on a judgment of conviction entered pursuant to a

guilty plea. See NRS 34.810(1)(a). Accordingly, we conclude the district court did not err by denying the petition as procedurally barred without holding an evidentiary hearing, see *Rubio v. State*, 124 Nev. 1032, 1046 and n.53, 194 P.3d 1224, 133-34 and n.53 (2008), and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Susan Johnson, District Judge  
Jonathan Wayne Mundo  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1).