

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN T. CEDENO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70482

FILED

DEC 28 2016

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

ORDER OF AFFIRMANCE

Appellant Devin Cedeno appeals from an order of the district court denying his postconviction petition filed on March 10, 2016.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Cedeno filed his petition on March 10, 2016, more than one year after entry of the judgment of conviction on January 5, 2015.² Thus, Cedeno's petition was untimely filed. *See* NRS 34.726(1). Cedeno's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Cedeno claims the district court erred by denying his petition as procedurally barred because he filed a motion to stay in December 2015, and he believed he was entitled to equitable tolling.³ The Nevada

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

²No direct appeal was taken.


³Cedeno also claims the district court erred by denying his petition without allowing him adequate time to reply to the State's response to his petition. We note the State did not file a motion to dismiss the petition; therefore, the district court was not required to allow Cedeno to respond. *See* NRS 34.750(4), (5). Also, because the petition was untimely, the State was not required to respond to Cedeno's claims on the merits. *See State v.*


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Supreme Court has rejected federal equitable tolling as providing good cause to excuse the delay in filing a petition. *See Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 874 (2014). Therefore, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Devin T. Cedeno
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (application of the procedural bars is mandatory).

⁴We conclude the district court did not err in declining to appoint counsel, NRS 34.750(1), or by declining to hold an evidentiary hearing, *see Hargrove v. State*, 100 Nev. 496, 502-03, 686 P.2d 222, 225 (1984) (to warrant an evidentiary hearing, a petitioner must allege specific facts that, if true, entitle him to relief).

The Honorable Jerome T. Tao, Judge, did not participate in the decision in this matter.