

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70649

FILED

FEB 23 2017

CHRISTINA BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Kevin Lewis appeals from the district court's order granting a motion to dismiss his postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Lewis filed his petition on June 25, 2015, 10 years after issuance of the remittitur on direct appeal on June 28, 2005. *Lewis v. State*, Docket No. 43932 (Order of Affirmance, June 2, 2005). Thus, Lewis' petition was untimely filed. *See* NRS 34.726(1). Lewis' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Lewis claims the district court erred by denying his claims of good cause. Lewis claimed he had good cause to overcome the procedural bars because he only recently learned the sentence in the instant case was ordered to run consecutively to the sentence in his other case, he did not understand the Nevada Supreme Court's order from his direct appeal affirming the district court's discretion to sentence him to consecutive sentences, and trial counsel told him his sentence was concurrent.

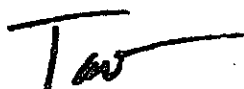
Lewis failed to demonstrate an impediment external to his defense prevented him from complying with the procedural bars. *See*

Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Lewis was present during sentencing when the district court imposed the consecutive sentence. Further, the Nevada Supreme Court affirmed the decision to impose consecutive sentences on direct appeal. See *Lewis v. State*, Docket No. 43932 (Order of Affirmance, June 2, 2005). Ignorance of the law and the facts of his own case did not demonstrate an impediment external to the defense. 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 lack of legal knowledge did not constitute an impediment external to the defense). Further, Lewis' claim counsel was ineffective for informing him he had received a concurrent sentence does not provide good cause because ineffective-assistance-of-counsel claims that are themselves procedurally barred cannot provide good cause. See *Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

Accordingly, we conclude the district court did not err in denying the petition as procedurally barred 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 allege specific facts that, if true, entitle him to relief), and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk