

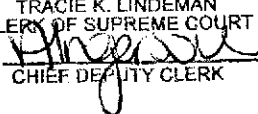
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH LEE WEBSTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69397

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Joseph Lee Webster filed his petition on August 3, 2015, more than seven years after entry of the judgment of conviction on June 13, 2008.² Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). Moreover, because the State specifically pleaded laches, Webster was required to overcome the rebuttable presumption of prejudice. *See* NRS 34.800(2).

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

²Webster's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Webster v. State*, Docket No. 67807 (Order Dismissing Appeal, May 18, 2015). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

Webster first argues he had good cause to excuse his delay because he requested his trial counsel to file an appeal and he first learned that no appeal had been filed in February of 2015. The Nevada Supreme Court has held that an appeal-deprivation claim may in certain circumstances provide good cause to excuse the filing of an untimely petition. *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003). In order to demonstrate cause for the delay, a petitioner must demonstrate he actually believed trial counsel had filed an appeal, the belief was objectively reasonable, and he had filed a postconviction petition within a reasonable time after learning that no direct appeal had been filed. *Id.* at 255, 71 P.3d at 508.

Based upon our review of the record on appeal, we conclude the district court did not err in denying this petition as procedurally barred. Webster's assertion that he believed a direct appeal was pending for more than seven years after his judgment of conviction was filed was not an objectively reasonable belief. *See id.* at 252-53, 71 P.3d at 506. Thus, because Webster did not raise his appeal-deprivation claim within a reasonable time after the filing of his judgment of conviction, he failed to demonstrate that this claim should provide cause for the delay.

Second, Webster argues he has good cause due to inadequate access to a law library and due to official interference by prison officials, both of which he asserts deprived him of access to the courts. On an appeal involving a postconviction petition for a writ of habeas corpus, this court generally declines to consider issues which were not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). A review of the record before this court reveals Webster did not raise these good-cause claims in his petition

before the district court. Because Webster does not demonstrate cause for his failure to raise these good-cause claims before the district court, we decline to consider them in this appeal.


Third, Webster appears to argue the district court erred in declining to appoint postconviction counsel to represent him in this matter. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel.

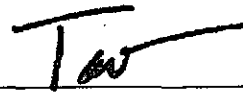
Fourth, Webster argues the district court erred by denying his petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Webster's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing.


Fifth, Webster argues the district court erred by concluding the petition was barred by laches. However, Webster failed to overcome the rebuttable presumption of prejudice to the State because he did not demonstrate he suffers from a fundamental miscarriage of justice. *See*

NRS 34.800(1)(b). Therefore, we conclude the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Joseph Lee Webster
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk