

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MELVIN NORLUND,
Appellant,
vs.
JACK PALMER, IN HIS OFFICIAL
CAPACITY AS THE WARDEN OF
NORTHERN NEVADA
CORRECTIONAL CENTER; AND
JAMES COX, IN HIS OFFICIAL
CAPACITY AS THE ACTING
DIRECTOR OF THE NEVADA
DEPARTMENT OF CORRECTIONS,
Respondents.

No. 70232

FILED

DEC 28 2016

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

ORDER OF AFFIRMANCE

Appellant Melvin Norlund appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on October 20, 2015. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Norlund's petition was filed more than one year after entry of the judgment of conviction on October 17, 2014; consequently, it was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1); NRS 178.472.


Norlund claims the district court erred by dismissing his untimely habeas petition because he was incompetent, he required the assistance of an inmate law clerk, and his petition was only one day late.


The district court found Norlund's good faith belief that his petition would be timely filed if it was mailed five days before the due date and his lack of competency did not constitute an impediment external to


the defense. Norlund's motion for a competency hearing did not demonstrate the dismissal of his untimely petition would be unduly prejudicial because it focused on Norlund's current competency and not his competency during the proceedings underlying his judgment of conviction. And Norlund did not show the failure to consider his petition would result in a fundamental miscarriage of justice because he did not present any new evidence of actual innocence.

We defer to the district court's factual findings, *see State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012), and we conclude the district court did not err by dismissing Norlund's untimely habeas petition, *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Nathan Tod Young, District Judge
Mary Lou Wilson
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk