

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN MARQUETTE GIPSON, A/K/A
KEVIN MARQUETT GIPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69174

FILED

DEC 28 2016

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

ORDER OF AFFIRMANCE

Appellant Kevin Gipson appeals from the denial of his postconviction petition for a writ of habeas corpus filed on June 6, 2014. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Gipson filed his petition on June 6, 2014, more than two years after entry of the judgment of conviction on March 13, 2012.¹ Thus, Gipson's petition was untimely filed. *See* NRS 34.726(1). Gipson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

In its response and motion to dismiss, the State argued the petition was procedurally barred. Gipson responded and argued he had good cause for failure to file a timely petition because his counsel was appointed only a few weeks before his petition was due and he was unaware the filing deadline for the petition was only a few weeks away. The district court considered these arguments and denied the State's motion to dismiss concluding Gipson demonstrated good cause to overcome

¹No direct appeal was taken.

the procedural bars.² The district court then denied the petition on its merits.

On appeal, Gipson claims the district court erred by denying his ineffective assistance of counsel claims because Gipson's diminished mental abilities required extraordinary legal assistance.³ The State argues the denial of the petition should be upheld on other grounds. Specifically, the State asserts the district court should have granted its motion to dismiss the petition as untimely filed.

We agree with the State. Application of the procedural bars is mandatory. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Counsel's failure to take notice of the filing deadline is not an impediment external to the defense and therefore, this could not constitute good cause to overcome the procedural bar. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, even assuming counsel's failure to take notice of the filing deadline could provide good cause, Gipson failed to demonstrate good cause for the entire length of his delay, because he did not file his petition within one year of counsel being appointed.⁴ *Id.* Therefore, we conclude the district court erred by denying the State's motion to dismiss and determining Gipson


²Hon. David B. Barker reviewed the motion to dismiss and denied the motion.

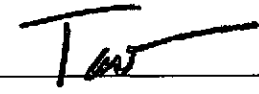
³Gipson also claimed the district court erred by denying his claim that he was not competent to plead guilty because the standard for competency for pleading guilty is different than the standard for competency for going to trial. Gipson abandoned this claim in his reply brief.

⁴Counsel was appointed on February 11, 2013.

demonstrated good cause to overcome the procedural bar. Because the district court reached the correct result, albeit for the wrong reasons, we affirm the denial of Gipson's appeal. *See Wyatt v. State*, 86 Nev. 294, 468 P.2d 338, 341 (1970). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵In light of this decision we decline to address Gipson's claims raised on appeal.