

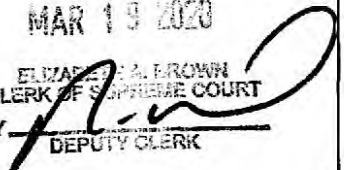
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES EDWARD BATES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77531-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Edward Bates, Jr. appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 8, 2014. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The district court denied Bates' petition because it was untimely filed and Bates failed to demonstrate good cause to overcome the procedural defect. *See* NRS 34.726(1). The district court also denied Bates' petition because the State affirmatively pleaded laches and Bates did not rebut the presumption of prejudice to the State. *See* NRS 34.800(2).

On appeal, Bates claims the district court should have conducted an evidentiary hearing to determine whether his mental health issues and learning disabilities provided good cause to excuse his untimely postconviction habeas petition. However, to warrant an evidentiary hearing, a petitioner must allege specific facts that are not belied by the record and that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Bates did not allege specific facts that if true would entitle him to relief because a petitioner's mental health issues do not constitute good

cause to excuse the petition's procedural defects. *See Phelps v. Director, 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 Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Further, the existence of mental health issues do not rebut the presumption of prejudice to the State. *See* NRS 34.800(2).

Accordingly, we conclude the district court did not err by denying Bates' procedurally barred habeas petition without an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk