

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HARRY DOUGLAS GILBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78291-COA

FILED

MAR 20 2020

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

ORDER OF AFFIRMANCE

Harry Douglas Gilbert appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 3, 2018, and a supplemental petition filed on October 25, 2018. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Gilbert filed his petition nearly nine years after entry of the judgment of conviction on May 5, 2009.¹ Thus, Gilbert's petition was untimely filed. *See* NRS 34.726(1). Gilbert's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Moreover, because the State specifically pleaded laches, Gilbert was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Gilbert claims the district court erred by denying his good cause claim. In his supplemental petition, Gilbert claimed he had good cause to overcome the procedural time bar because of his mental illness. In support of that claim, Gilbert argued that he was found incompetent during the trial

¹Gilbert did not appeal from his judgment of conviction.

phase proceedings, he was only found competent later because he had the help of counsel, and his petition filed on April 3, 2018, was incomprehensible.² The district court found Gilbert failed to allege or demonstrate sufficient facts that he was incompetent during the time between when his judgment of conviction was filed and Gilbert filed his petition. Therefore, the district court concluded this was a bare claim and Gilbert failed to demonstrate his mental illness affected his ability to file a timely petition. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare and lack specific factual allegations). The record supports the decision of the district court, and we conclude the district court did not err by denying Gilbert's good cause claim.

Gilbert also argues the district court erred by denying his petition based on statutory laches. Gilbert argues that, based on his mental health issues, he was reasonably diligent in filing his petition and the State failed to demonstrate it would be prejudiced if his petition was granted. He argued there are recorded interviews with the victim, Gilbert, and Gilbert's wife that the State could use at trial.

NRS 34.800(2) creates a rebuttable presumption that the granting of the petition would prejudice the State in its ability to conduct a retrial. Further, even if a petitioner can overcome the rebuttable presumption, the district court may still dismiss the petition if the


²We note Gilbert failed to provide this court with a copy of the doctors' findings regarding his competency or the presentence investigation report which included information regarding Gilbert's mental health. It is the responsibility of the appealing party to provide these documents on appeal. *See* NRAP 30(b)(3); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper record rests on the appellant.").

petitioner fails to demonstrate (1) the petition was based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence or (2) that a fundamental miscarriage of justice would occur if his petition is not heard. *See* NRS 34.800(1).

The district court found that Gilbert failed to rebut the presumption of prejudice to the State. On appeal, Gilbert again argues the interviews are sufficient to demonstrate the State would not be prejudiced. However, Gilbert failed to provide this court with a copy of these interviews. Therefore, he failed to demonstrate the district court erred by determining he failed to rebut the presumption of prejudice. *See* NRAP 30(b)(3); *Greene*, 96 Nev. at 558, 612 P.2d at 688. Further, Gilbert failed to demonstrate he exercised due diligence because his claims were available during the statutory time period and he failed to allege or demonstrate his mental health issues prevented him from raising his claims in a timely manner. Further, Gilbert failed to demonstrate a manifest injustice. Accordingly, we conclude the district court did not err by concluding Gilbert's petition was procedurally barred based on statutory laches. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk