

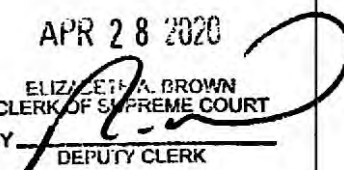
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESLIE HOSEA MARTIN,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 79531-COA

FILED

APR 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Weslie Hosea Martin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Martin's postsentence motion to withdraw guilty plea was filed on May 21, 2019. The district court properly construed it as a postconviction petition for a writ of habeas corpus per *Harris v. State*, 130 Nev. 435, 448-49, 329 P.2d 619, 628 (2014), and ordered him to correct any defects. Martin complied, filing a supplemental pleading on June 17, 2019. Martin contends on appeal that the district court erred by denying his petition as procedurally barred.

Martin filed his petition more than a year after entry of the judgment of conviction on February 14, 2018. His petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1).

Martin first argued he had good cause because his petition was filed within one year of the entry of his amended judgment of conviction,

which was filed on September 10, 2018, and the dismissal of his appeal from the amended judgment of conviction, *see Martin v. State*, Docket No. 77017 (Order Dismissing Appeal, April 22, 2019). However, Martin's underlying claims did not challenge the proceedings that led to the amended judgment of conviction. Accordingly, neither entry of the amended judgment of conviction nor the dismissal of the appeal from the amended judgment of conviction provided good cause to overcome the procedural time bar. *See Sullivan v. State*, 120 Nev. 537, 541-42, 96 P.3d 761, 764-65 (2004).

Martin next argued he had good cause because of the lack of evidence against him. Martin did not explain why this claim was not reasonably available to him within the one-year statutory period. Accordingly, it did not constitute good cause. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Martin raises two new substantive claims in his informal brief: challenging the enumeration of two firearms in a single count and evidence used by the State at Martin's probation revocation hearing. Even if Martin could overcome the procedural time bar, we would decline to consider these claims for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Finally, we conclude the district court did not abuse its discretion by denying Martin's request for the appointment of postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court found the petition was procedurally barred pursuant to NRS 34.726(1) and summarily dismissed it. We thus conclude the district court did not abuse its discretion

by declining to appoint counsel. And for the forgoing reasons, we further conclude the district court did not err by denying Martin's petition as procedurally time barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Weslie Hosea Martin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk