

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COREY THOMAS BARNETT, A/K/A
CORY THOMAS BARNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79282-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

Corey Thomas Barnett appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.


Barnett filed his petition on April 5, 2019, more than one year after issuance of the remittitur on direct appeal on November 6, 2017. *Barnett v. State*, Docket No. 71132-COA (Order of Affirmance, October 11, 2017). Thus, Barnett's petition was untimely filed. See NRS 34.726(1). Barnett's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.*

Barnett claimed he had cause for the delay because he was not aware that his direct appeal had been resolved. However, Barnett did not demonstrate that an impediment external to the defense prevented him from filing a petition in a timely manner. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). A postconviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with the direct appeal. See NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct

review); NRS 34.730(3) (“[T]he clerk of the district court shall file a [habeas corpus] petition as a new action separate and distinct from any original proceeding in which a conviction has been had.”); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing that a postconviction proceeding is separate from the direct appeal), *overruled on other grounds* by *Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988). Accordingly, Barnett failed to demonstrate cause for his delay because he could have pursued postconviction relief before he was aware that his direct appeal had been resolved. Therefore, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Corey Thomas Barnett
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk