

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS ANTONIO MONTOYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78637-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

Carlos Antonio Montoya appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on August 21, 2018, and supplemental petition filed on November 14, 2018. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

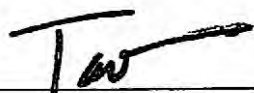
Montoya filed his petition more than two years after entry of the judgment of conviction on January 14, 2016. Montoya did not pursue a direct appeal. His petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

Montoya contends the district court erred by dismissing his petition as procedurally barred. He claims that his status as a juvenile excused his untimeliness in seeking postconviction relief, and he further claims his petition was filed within a reasonable time of his turning 18 years old. For the purposes of this appeal, we will assume, without deciding, that Montoya was excused from seeking timely postconviction relief while he was a minor. Montoya did not state his birthdate, but the record before this court indicates he reached his age of majority in March 2017. Montoya waited for more than a year after that time to file the instant postconviction

petition, and he offered no excuse for this delay. We therefore conclude the district court did not err by dismissing Montoya's petition as procedurally barred. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a claim must be raised within one year of its becoming available). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerome M. Polaha, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk