

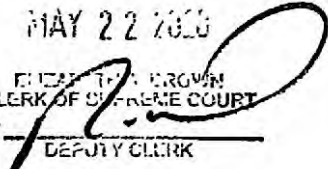
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKIE LEE HOLMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79374-COA

FILED

MAY 22 2019

EMILY T. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rickie Lee Holmes appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on April 19, 2019. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Holmes filed his petition more than one year after issuance of the remittitur on direct appeal on March 20, 2018. *See Holmes v. State*, Docket No. 69923 (Order of Affirmance, December 1, 2017). The petition was therefore untimely filed. *See* NRS 34.726(1). Further, the petition was subject to summary dismissal because all of his claims were appropriate for direct appeal. *See* NRS 34.810(1)(b)(2). Holmes' petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b).

Holmes did not argue that he had good cause to overcome the procedural bars. Holmes' mailing of the petition to the wrong entity would not constitute good cause because it did not constitute an impediment external to the defense. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) ("In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from

complying with the state procedural default rules.”). We therefore conclude the district court did not err by dismissing Holmes’ petition as procedurally barred.

We also conclude the district court did not abuse its discretion by denying Holmes’ 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 and summarily dismissed it.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Rickie Lee Holmes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk