

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELISA GILLES-PAREKH,
Appellant,
vs.
DWIGHT NEVEN, WARDEN,
Respondent.

No. 80650-COA

FILED

OCT 16 2020

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

ORDER OF AFFIRMANCE

Elisa Gilles-Parekh appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Gilles-Parekh filed her petition on December 16, 2019, more than one year after entry of the judgment of conviction on January 5, 2018.¹ Thus, Gilles-Parekh's petition was untimely filed. *See* NRS 34.726(1). Gilles-Parekh's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Gilles-Parekh did not attempt to demonstrate cause for her delay in her petition and the district court denied the petition as procedurally barred.

Gilles-Parekh first argues on appeal that she had cause for her delay because her counsel abandoned her after the sentencing hearing and because she lacks legal assistance in the prison. However, Gilles-Parekh did not raise these good-cause claims in her petition, and we decline to consider them in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

¹Gilles-Parekh did not pursue a direct appeal.

Second, Gilles-Parekh argues the district court erred by denying her petition before the State filed a response and by entering an order to statistically close her case. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory.” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). And Gilles-Parekh had the burden of pleading and proving facts sufficient to demonstrate good cause. See NRS 34.726(1); *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Because Gilles-Parekh did not attempt to demonstrate cause for the delay in her petition, Gilles-Parekh failed to demonstrate the district court erred by denying the petition as procedurally barred before the State filed a response and by subsequently statistically closing the case.

Third, Gilles-Parekh appears to argue that the district court should have permitted her the opportunity to rebut the presumption of prejudice to the State pursuant to NRS 34.800(2). However, NRS 34.800(2) did not apply to this petition because the petition was not filed more than five years after entry of the judgment of conviction and the State did not move to dismiss the petition based upon laches. Therefore, Gilles-Parekh does not demonstrate she is entitled to relief.

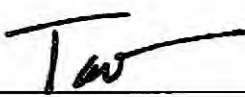
Fourth, Gilles-Parekh appears to claim the district court erred by denying the petition without appointing postconviction counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* However, the issues in this matter were not difficult, Gilles-Parekh was able to comprehend the

proceedings, and discovery with the aid of counsel was not necessary. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, we conclude the district court did not abuse its discretion by denying the petition without appointing postconviction counsel.

Fifth, Gilles-Parekh argues the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record and, if true, would entitle her to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Gilles-Parekh did not demonstrate cause for her delay, she fails to demonstrate the district court erred by declining to conduct an evidentiary hearing concerning her procedurally-barred claims. *Id.* at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Elisa Gilles-Parekh
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk