

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERTO ANTHONY RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81801-COA

FILED

APR 23 2021

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

ORDER OF AFFIRMANCE

Roberto Anthony Ramirez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Ramirez filed his petition on August 10, 2020, more than one year after issuance of the remittitur on direct appeal on June 27, 2019. *Ramirez v. State*, Docket No. 73074 (Order of Affirmance, May 31, 2019). Thus, Ramirez's petition was untimely filed. See NRS 34.726(1). Ramirez's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Ramirez did not attempt to demonstrate cause for his delay in his petition, and the district court denied the petition as procedurally barred.

Ramirez argues on appeal that he had cause for his delay because his appellate counsel did not inform him that the remittitur had issued on direct appeal, explain how to pursue postconviction relief, or send him the case file. Ramirez also argues he has cause for his delay because he does not understand legal issues, has a language barrier, and has to rely on inmate law clerks. In addition, Ramirez contends that failure to consider his claims on the merits would result in a fundamental miscarriage of

justice. However, these issues were not raised by Ramirez in his petition or considered by the district court. Ramirez does not demonstrate an impediment external to the defense prevented him from raising these issues in his petition, *cf. Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), and therefore we decline to consider them for the first time on appeal, *see McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

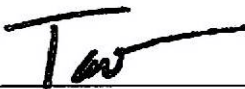
Next, Ramirez claims the district court erred by denying his motion for the appointment of counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). A review of the record demonstrates that the issues raised in Ramirez’s petition were not difficult, he did not allege a language barrier, 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). Based on the record, we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel.

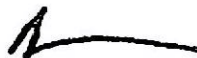
Finally, Ramirez argues on appeal that the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Ramirez did not allege in his petition that he had cause for his delay, he fails to demonstrate the district court erred by declining to conduct an evidentiary hearing concerning his procedurally barred claims. *See 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.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Roberto Anthony Ramirez
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We have reviewed all documents Ramirez has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Ramirez attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.