

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK MCCAFFREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81756-COA

FILED

MAY 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Patrick McCaffrey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

McCaffrey filed his petition on September 19, 2019, more than two years after entry of the judgment of conviction on February 15, 2017.¹ Thus, McCaffrey's petition was untimely filed. *See* NRS 34.726(1). McCaffrey's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, McCaffrey contended he had cause for his delay because of medical issues and because he was not aware he could pursue postconviction relief. However, those issues did not constitute an impediment external to the defense that prevented McCaffrey from timely filing his petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).

¹McCaffrey did not pursue a direct appeal.

Therefore, McCaffrey was not entitled to relief based upon this good cause claim.

Second, McCaffrey claimed he had cause for his delay because he is not permitted to physically access the law library and has to rely on the paging system to conduct legal research. “[A]n inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.” *See Lewis v. Casey*, 518 U.S. 343, 351 (1996). Rather, a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *See id.* McCaffrey did not identify any information he was unable to obtain due to the limitations of the prison law library system and did not explain how a lack of physical access to the law library caused his delay in pursuing postconviction relief. Therefore, McCaffrey was not entitled to relief based upon this good cause claim.

Third, McCaffrey appeared to assert he had cause for his delay pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), because postconviction counsel was not appointed to assist him within one year of the entry of his judgment of conviction. However, the Nevada Supreme Court has held that *Martinez* does not apply to Nevada’s statutory postconviction procedures, and the appointment of postconviction counsel in noncapital cases is not statutorily or constitutionally required. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Thus, any failure to appoint postconviction counsel did not provide good cause to overcome the procedural time bar in this matter. Moreover, McCaffrey’s claims stemming from the trial-level proceedings were reasonably available to be raised in a timely filed petition, and McCaffrey did not demonstrate a failure to appoint postconviction counsel within the timely filing period constituted an

impediment external to the defense that prevented him from pursuing postconviction relief in a timely manner. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Therefore, McCaffrey was not entitled to relief based upon this good cause claim. Accordingly, we conclude the district court did not err by denying the petition as procedurally barred.

Next, the district court denied McCaffrey's request for the appointment of 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, McCaffrey 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 motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Patrick McCaffrey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk