

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHANE MICHAEL DAHIR,  
Appellant,  
vs.  
TIM GARRETT, WARDEN,  
Respondent.

No. 82029-COA

**FILED**

**JUN 28 2021**

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

*ORDER OF AFFIRMANCE*

Shane Michael Dahir appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Dahir argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Dahir filed his petition on July 17, 2020, more than five years after entry of the judgment of conviction on June 29, 2015, and more than three years after entry of an order revoking probation and amended judgment of conviction on September 20, 2016. Thus, Dahir's petition was untimely filed. *See* NRS 34.726(1). Dahir's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see id.*, or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

First, Dahir appeared to claim the procedural bars did not apply because the sentencing court lacked jurisdiction to impose sentence or revoke his probation as it did not properly place him on probation. However, Dahir's claim did not implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6(1); NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). Therefore, the district court properly applied the procedural time bar to Dahir’s petition, see *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”), and it did not err by denying this good-cause claim without conducting an evidentiary hearing.

Second, Dahir appeared to claim that he had good cause due to the ineffective assistance of his counsel during the trial-level proceedings and the probation revocation hearing. The underlying claims of ineffective assistance of counsel were reasonably available to have been raised during the timely filing period for a postconviction petition, and Dahir did not demonstrate an impediment external to the defense prevented him from raising them in a timely manner. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Third, Dahir claimed the procedural bars should not apply because he was actually innocent. Dahir based his actual-innocence claim upon assertions that his counsel was ineffective for failing to investigate and he was forced to accept a plea offer so that he could continue to support

his family while serving probation. Dahir also contended the victim's statements were neither trustworthy nor corroborated. Dahir did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). We therefore conclude the district court did not err by denying Dahir's petition as procedurally barred.

Fourth, Dahir argues on appeal the district court erred by failing to consider his reply to the State's opposition to his petition because it was not filed in a timely manner by the clerk's office. The district court has the discretion to allow a petitioner to file documents to supplement the initial petition, but the district court did not grant Dahir permission to file any additional documents. See NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006). Because Dahir did not have permission to file additional documents, he fails to demonstrate any prejudice stemming from a delay in filing his reply. Therefore, Dahir is not entitled to relief based upon this claim.


Fifth, Dahir appears to argue on appeal the district court erred by denying his motion to appoint 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.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760,

761 (2017). The issues in this matter were not difficult, Dahir was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Therefore, we conclude the district court did not err by denying the motion for the appointment of counsel.

Finally, Dahir argues on appeal the district court erred by conducting a hearing concerning his postconviction petition outside of his presence. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely directed the State to prepare an order denying the petition. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner’s statutory rights were violated when she was not present at hearing where testimony and evidence were presented). Dahir does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, we conclude the district court did not err in this regard, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Cristina D. Silva, District Judge  
Shane Michael Dahir  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk