

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRICK LAMAR BISHOP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82530-COA

FILED

AUG 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *awb*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Derrick Lamar Bishop appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Bishop argues that the district court erred by denying his petition as procedurally barred. Bishop filed his petition on October 29, 2020, more than 26 years after entry of the judgment of conviction on January 21, 1994.¹ Thus, Bishop's petition was untimely filed. *See* NRS 34.726(1). Bishop's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Further, because the State specifically pleaded laches, Bishop was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Bishop appeared to contend he had cause for his delay because he is mentally disabled and has to rely on others for help with legal matters. However, those issues did not constitute an impediment external to the defense that prevented Bishop from timely filing his petition. *See*

¹Bishop did not pursue a direct appeal.


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 Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Therefore, Bishop was not entitled to relief based upon this good-cause claim.

Bishop thus did not demonstrate cause for his delay. In addition, Bishop fails to demonstrate the district court erred by concluding he did not overcome the presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

Next, Bishop appears to argue on appeal that his claims should be considered on their merits because he is actually innocent. However, Bishop did not raise this fact-based issue in his petition, and we decline to consider it in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Derrick Lamar Bishop
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk