

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVONTAE HICKMAN, A/K/A
DAVONTRE HICKMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82503-COA

FILED

OCT 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Davontae Hickman appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 8, 2020, and a supplemental petition filed on November 16, 2020. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Hickman argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Hickman filed his petition over five years after entry of the judgment of conviction on November 13, 2014.¹ Thus, Hickman's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hickman's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(2). Hickman's petition was

¹Hickman's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Hickman v. State*, Docket No. 70838 (Order Dismissing Appeal, October 6, 2016). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

²Hickman did not appeal the denial of his previous petition, which was filed in the district court on July 14, 2016.

21-29447

procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). 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. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

First, Hickman argues the district court erred by failing to find Hickman's illiteracy to be good cause for the delay. Hickman's alleged illiteracy did not demonstrate an impediment external to the defense that prevented Hickman from timely filing his petition. See *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 Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Thus, Hickman failed to demonstrate this claim provided good cause. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, we conclude the district court did not err by determining that Hickman's alleged illiteracy did not constitute good cause.

Second, Hickman argues the district court should have applied the equitable tolling standard used by various federal courts, as application of equitable tolling would have excused the procedural bars. However, the Nevada Supreme Court has expressly "rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute's plain language requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). Therefore, we conclude the district court did not err by concluding Hickman was not entitled to relief based upon this claim. Accordingly, we conclude the district court did not err by denying the

petition as procedurally barred without conducting an evidentiary hearing,
and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Christy L. Craig, District Judge
Nevada Defense Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³The Honorable Jerome T. Tao, did not participate in the decision of this matter.