

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL KEVIN GARDENHIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82648-COA

FILED

OCT 26 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Gardenhire filed his first petition on August 16, 2019, and his second petition on October 1, 2019. Both petitions were filed more than one year after entry of the judgment of conviction on February 9, 2018.¹ Thus, Gardenhire's petitions were untimely filed. See NRS 34.726(1). Gardenhire's petitions were procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice.² See NRS 34.726(1).

¹Gardenhire's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Gardenhire v. State*, Docket No. 77701 (Order Dismissing Appeal, February 13, 2019). 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).

²The district court entered an amended judgment of conviction on May 9, 2018, but entry of the amended judgment of conviction did not provide good cause because all of the claims Gardenhire raised in the instant petition arose out of the proceedings involving his initial judgment of conviction. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

21-30802

Gardenhire appeared to assert that he had good cause due to ineffective assistance of trial-level counsel. "In order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Gardenhire's ineffective-assistance-of-counsel claim was itself procedurally barred because he raised it in an untimely manner. Gardenhire's underlying claim of ineffective assistance of trial-level counsel was reasonably available to have been raised during the timely filing period for a postconviction petition, and Gardenhire did not demonstrate an impediment external to the defense prevented him from raising it in a timely manner. *See id.* at 252-53, 71 P.3d at 506. Therefore, Gardenhire failed to demonstrate cause for his delay. Accordingly, we conclude the district court did not err by denying the petitions, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³The district court improperly reached the merits of Gardenhire's claim of ineffective assistance of counsel. *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 postconviction habeas petitions is mandatory."). We nevertheless affirm the district court's order because it reached the correct result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

cc: Hon. Cristina D. Silva, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk