

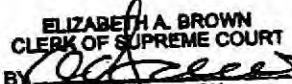
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANDRE DWAYNE HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82816-COA

FILED

DEC 01 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deandre Dwayne Harris appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Harris argues the district court erred by dismissing his petition as procedurally barred. Harris filed his petition on August 7, 2020, more than eight years after issuance of the remittitur on direct appeal on February 6, 2012. *See Harris v. State*, No. 58320, 2012 WL 120023 (Nev. Jan. 12, 2012) (Order of Affirmance). Thus, Harris's petition was untimely filed. *See* NRS 34.726(1). Harris'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, Harris was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Harris contended he had cause for the delay due to errors committed by his appellate counsel and because counsel did not tell him that his direct appeal had been decided by the Nevada Supreme Court. “[I]n 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). Harris's ineffective-assistance-of-counsel claims were themselves procedurally barred because he raised them in an untimely petition. In addition, Harris stated that he did not inquire as to the status of his direct appeal until 2020, more than eight years after the Nevada Supreme Court issued its decision in that matter. Harris did not explain why he waited so long to investigate the status of his direct appeal, and Harris did not demonstrate that his eight-year delay in pursuing postconviction relief was reasonable. *See id.* at 254, 71 P.3d at 507-08 (stating a petitioner may demonstrate cause for the delay if "he filed his state post-conviction relief petition within a reasonable time after he should have known that his counsel was not pursuing his direct appeal" (internal quotation marks omitted)). Thus, Harris did not demonstrate an impediment external to the defense caused his entire delay in pursuing postconviction relief. *See id.* at 252-53, 71 P.3d at 506.

Moreover, Harris did not overcome the presumption of prejudice to the State. Therefore, we conclude the district court did not err by dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
DeAndre Dwayne Harris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk