

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUSTAVO HERNANDEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83691-COA

FILED

MAR 09 2022

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

ORDER OF AFFIRMANCE

Gustavo Hernandez, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 12, 2021. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Hernandez's petition was filed by the district court clerk's office more than one year after issuance of the remittitur on direct appeal on June 3, 2020. *See Hernandez v. State*, No. 74835-COA, 2020 WL 2319993 (Nev. Ct. App. May 8, 2020) (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction). Thus, Hernandez's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1); *Gonzales v. State*, 118 Nev. 590, 595-96, 53 P.3d 901, 903-04 (2002) (strictly construing the one-year deadline in

NRS 34.726 and concluding that a petition filed one year and two days after the Nevada Supreme Court issued the remittitur was untimely).¹

Hernandez claims the district court erred by denying his petition as procedurally barred because his petition was received by the clerk's office within one year of the date his appellate counsel told him the remittitur issued. Hernandez fails to demonstrate good cause because he failed to demonstrate an impediment external to the defense such as showing that the factual or legal basis for a claim was not reasonably available or that some interference by officials made compliance impracticable. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Hernandez next claims his petition was timely received by the district court clerk's office but they failed to timely file it. The clerk's office stamp indicates they received the petition on June 29, 2021. Hernandez fails to demonstrate good cause because this was still more than one year after issuance of the remittitur on direct appeal. Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

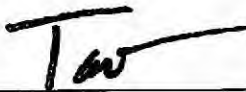
Hernandez also appears to claim he had good cause to file an untimely petition because he did not receive his case file and transcripts until January of 2021. Hernandez did not raise this claim below, and we


¹An amended judgment of conviction was filed on July 8, 2020. However, this amended judgment of conviction did not provide good cause because the claims Hernandez 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).

decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (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
Gustavo Hernandez, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk