


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM JOSEPH MCCAFFREY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83388-COA

**FILED**

JUN 29 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

William Joseph McCaffrey appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

McCaffrey argues the district court erred by dismissing his October 20, 2020, petition as procedurally barred without first conducting an evidentiary hearing. McCaffrey filed his petition more than ten years after issuance of the remittitur on direct appeal on August 10, 2010. *McCaffrey v. State*, No. 54873, 2010 WL 3503752 (Nev. July 15, 2010) (Order of Affirmance). Thus, McCaffrey's petition was untimely filed. See NRS 34.726(1). McCaffrey's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—see *id.*, or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, see *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). 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, McCaffrey claimed he had cause for his delay because he is not trained in the law 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 McCaffrey from timely filing his petition. *See Hathaway v. State*, 119 Nev. 248, 253, 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 Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).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, the district court did not err by rejecting this good-cause claim without conducting an evidentiary hearing.

Second, McCaffrey claimed that he had cause for his delay due to the ineffective assistance of counsel. McCaffrey asserted that counsel was appointed to help him with his postconviction motion for modification of sentence and she did not return his legal paperwork when she was finished helping him. However, counsel's failure to send McCaffrey his paperwork did not constitute cause for the delay because it did not prevent McCaffrey from filing a timely petition. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995).

To the extent McCaffrey also contended he had cause for his delay due to ineffective assistance of postconviction counsel, the appointment of postconviction counsel in this matter was not statutorily or constitutionally required; thus, McCaffrey had no right to the effective assistance of postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Moreover, McCaffrey's underlying claims were reasonably available to be raised within one year after issuance of the remittitur on direct appeal, and McCaffrey did not explain why he waited more than ten years to raise such claims. *See Rippo v. State*, 134 Nev. 411,

422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available). Therefore, we conclude the district court did not err by rejecting this good-cause claim without conducting an evidentiary hearing.

Third, McCaffrey claimed that the procedural time bar did not apply because he is actually innocent. McCaffrey based this claim upon an assertion that he recently discovered a detective that worked on his case was later accused of falsifying evidence during the detective's divorce proceedings, and therefore, the detective may have falsified evidence in this matter.

The record reveals that McCaffrey was discovered in the possession of numerous images and videos depicting children committing sexual acts. McCaffrey confessed to the authorities that he searched the internet for child pornography. McCaffrey acknowledged that he downloaded child pornography and transferred that content to CDs, DVDs, and printed material. In addition, McCaffrey admitted that he filmed children and that the nature of his films would be considered inappropriate by other people.

In light of the substantial evidence of McCaffrey's guilt, he did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12. We therefore conclude the district court did not err by rejecting this actual-innocence claim without conducting an evidentiary hearing.

Finally, McCaffrey argues on appeal that the district court should have conducted an evidentiary hearing concerning the merits of his underlying claims. Because McCaffrey did not demonstrate cause for his delay, he failed to demonstrate the district court should have conducted an evidentiary hearing concerning his procedurally barred claims. *See Rubio*, 124 Nev. at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). Therefore, we conclude that the district court did not err by dismissing the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Barry L. Breslow, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk