

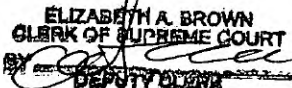
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONNY DARROW POWE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84430-COA

FILED

AUG 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronny Darrow Powe appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 15, 2021. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Powe filed his petition more than four years after entry of the judgment of conviction on February 17, 2017.¹ Thus, Powe's petition was untimely filed. *See* NRS 34.726(1); *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (providing the timely filing period for a postconviction habeas corpus petition begins to run from the entry of the judgment of conviction if no timely direct appeal is taken). Powe'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).

¹Powe's appeal from his judgment of conviction was dismissed as untimely. *See Powe v. State*, No. 72840, 2017 WL 2266946 (Nev. May 19, 2017) (Order Dismissing Appeal).

Powe claims the district court erred by denying his petition as procedurally barred because he demonstrated good cause to overcome the procedural bar. First, Powe claimed he had good cause to overcome the procedural bar because he did not understand the DNA evidence in the case until an inmate law clerk explained it to him. Powe's inability to understand the DNA evidence was not an impediment external to the defense. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *see also Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (providing that mental disability, illiteracy, or lack of an inmate law clerk do not excuse the procedural bars), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Therefore, we conclude Powe failed to demonstrate he was entitled to relief on this claim.

Second, Powe claimed he had good cause to overcome the procedural bar because counsel failed to file an appeal on his behalf. Powe failed to demonstrate how this provided good cause to overcome the procedural bar because this claim could have been raised in a timely filed postconviction petition. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Therefore, we conclude Powe failed to demonstrate he was entitled to relief on this claim.

Third, Powe claimed he had good cause to overcome the procedural bar because counsel only informed him of his postconviction remedy one month before the deadline. Even assuming counsel erred by failing to timely inform him, Powe failed to allege why he waited more than three years beyond the deadline to file his petition. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding that a good cause claim

must be raised within one year of its becoming available). Therefore, we conclude Powe failed to demonstrate he was entitled to relief on this claim.

Fourth, Powe claimed he had good cause to overcome the procedural bar because the Nevada Supreme Court improperly denied him a direct appeal. Powe claimed that the supreme court improperly construed his notice of appeal from the denial of house arrest as an appeal from his judgment of conviction. Powe failed to demonstrate how this provided good cause for filing an untimely postconviction petition. Therefore, we conclude Powe failed to demonstrate he was entitled to relief on this claim.


Fifth, Powe claimed he could overcome the procedural bar because he was actually innocent. Powe claimed that the DNA evidence showed that he was excluded from the DNA found on the hammer and there was no firearm found such that he could not be convicted of hurting the victim with the use of a deadly weapon. First, the DNA evidence did not exclude him as a possible contributor; instead, the DNA was found to be a mixture, one of which belonged to a male. Second, Powe pleaded guilty to using a firearm, a hammer, and/or fire as a deadly weapon to injure the victim. Even were the DNA exculpatory toward the use of a hammer, it was not exculpatory as to the firearm or fire. Further, that a firearm was not recovered also did not show that Powe was actually innocent. Powe 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. Accordingly,

we conclude Powe failed to demonstrate he was entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Ronny Darrow Powe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk