


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO LAMARCUS MASTERS,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN OF
ESP; AND THE STATE OF NEVADA,
Respondents.

No. 84608-COA

FILED

JAN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio LaMarcus Masters appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Masters argues the district court erred by denying his October 28, 2021, petition as procedurally barred.¹ Masters filed his petition more than three years after entry of the judgment of conviction on January 26, 2018.² Thus, Masters' petition was untimely filed. *See* NRS 34.726(1). Masters' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, Masters claimed that he had good cause due to ineffective assistance of trial-level counsel. “[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). Masters' ineffective-assistance-of-counsel claims were themselves procedurally

¹We note the district court received Masters' petition on August 30, 2021, but did not file stamp it until October 28, 2021.

²Masters did not pursue a direct appeal.

barred because he raised them in an untimely manner. And Masters did not demonstrate an impediment external to the defense prevented him from raising his claims at an earlier time. *See id.* at 252-53, 71 P.3d at 506. Therefore, we conclude the district court did not err by denying this good-cause claim.

Second, Masters claimed that he had good cause due to ineffective assistance of counsel for failing to pursue a direct appeal or explain his right to a direct appeal. Masters also claimed that he had cause for his delay because counsel failed to explain that he had to pursue state postconviction remedies in a timely manner.

A reasonable belief that counsel is pursuing an appeal may establish good cause but only where the postconviction habeas petition is filed within a reasonable time after the petitioner learns that the appeal was not filed. *Id.* at 254-55, 71 P.3d at 507-08. Masters did not allege that he believed counsel pursued a direct appeal. In addition, Masters did not allege that he filed this petition within a reasonable time after learning that no direct appeal had been filed. Moreover, Masters' allegation concerning counsel's failure to explain the state postconviction timely filing deadline was insufficient to demonstrate that an impediment external to the defense prevented him from filing a timely petition. *See Sullivan v. State*, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004). Therefore, we conclude the district court did not err by denying this good-cause claim.

Third, Masters appeared to claim he had good cause because he is not trained in the law and because he was confused as to how to challenge his convictions in both federal and state courts. However, those issues did not constitute an impediment external to the defense that prevented Masters from timely filing his petition. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506;

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, we conclude that the district court did not err by denying this good-cause claim.

Fourth, Masters appeared to claim he had good cause because he recently received his case file. However, this issue did not constitute good cause because it did not prevent Masters from filing a timely petition. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Therefore, we conclude the district court did not err by rejecting this good-cause claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Antonio Lamarcus Masters
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk