

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIDGETTE LYNN CHAPLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85952-COA

FILED

MAY 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bridgette Lynn Chaplin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Chaplin argues that the district court erred by denying her September 30, 2022, petition as procedurally barred. Chaplin filed her petition more than two years after entry of the judgment of conviction on August 19, 2020.¹ Thus, Chaplin's petition was untimely filed. *See* NRS 34.726(1). Chaplin's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Chaplin first claimed that she had good cause because the minutes of a July 7, 2021, hearing in the district court indicated that the judgment of conviction was filed on August 19, 2021. However, the judgment of conviction was plainly filed on August 19, 2020, and Chaplin stated in her petition that she received a copy of the judgment of conviction

¹A corrected judgment of conviction was also entered on August 19, 2020, and it clarified that Chaplin was sentenced to serve 8 to 20 years in prison. Chaplin did not pursue a direct appeal.

after she was sent to prison. Moreover, Chaplin did not demonstrate that an impediment external to the defense prevented her from timely filing her petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, we conclude that Chaplin is not entitled to relief based on this claim.

Second, Chaplin appeared to assert that she had good cause because her trial-level counsel failed to file a direct appeal. “[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.” *Id.* at 252, 71 P.3d at 506. Moreover, “an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period.” *Id.* at 253, 71 P.3d at 507. In her petition, Chaplin alleged that her trial-level counsel did not file a direct appeal even though she requested that he do so. Chaplin also stated that she fired her trial-level counsel on January 4, 2021, because he did not pursue a direct appeal. Based on Chaplin’s statements in her petition, she was aware during the timely filing period that counsel did not pursue a direct appeal. Because Chaplin’s appeal deprivation claim was reasonably available to her during the timely filing period, her claim did not constitute good cause to excuse her delay in filing her petition. Therefore, we conclude that Chaplin is not entitled to relief based on this claim.

Third, Chaplin appeared to claim that she had good cause because she retained postconviction counsel to pursue a postconviction petition but communication issues caused by prison lockdowns and COVID-19 policies led counsel to instead file a motion for modification of sentence. “[C]ounsel’s affirmative representation that a timely postconviction petition will be filed, combined with counsel’s subsequent abandonment without timely filing the petition, presents a circumstance where counsel’s actions

or omissions can constitute an impediment external to the defense to establish cause for the delay under NRS 34.726(1)(a).” *Harris v. State*, 133 Nev. 683, 688, 407 P.3d 348, 352 (Ct. App. 2017). However, to demonstrate that counsel’s abandonment constitutes good cause, a petitioner must show that she reasonably believed counsel filed a timely petition, counsel abandoned petitioner without notice and failed to timely file the petition, and the petitioner ultimately filed a petition within a reasonable time after the petitioner should have known counsel did not timely file a petition. *Id.* “If a petitioner can meet all prongs of this test, the petitioner will have established cause for the delay under NRS 34.726(1)(a).” *Id.*

Chaplin did not allege that she believed that counsel filed a timely petition.² Thus, Chaplin’s allegations were insufficient to demonstrate that she had cause for her delay based on postconviction counsel’s failure to file a postconviction petition. Therefore, we conclude that Chaplin is not entitled to relief based on this claim.

Chaplin also appears to claim on appeal that the district court erred by denying her request for the appointment of postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may

²In her informal brief, Chaplin states that she was under the impression that her postconviction counsel had filed a postconviction petition for a writ of habeas corpus. To the extent that Chaplin attempts to allege that she believed that postconviction counsel filed a timely petition, Chaplin did not raise this argument in her petition but instead stated that she was aware counsel filed a motion for modification of sentence. Because Chaplin did not raise this new allegation in her petition and she does not allege good cause for her failure to do so, we 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).

consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). The district court found that the issues in this matter were not difficult, Chaplin was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying Chaplin's request for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Bridgette Lynn Chaplin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk