

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ABIMAEL RODRIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87357-COA

**FILED**

JUL 03 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Abimael Rodriguez appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on April 4, 2023. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Rodriguez filed his petition more than one year after entry of the judgment of conviction on March 23, 2022.<sup>1</sup> Thus, Rodriguez's petition was untimely filed. *See* NRS 34.726(1). Rodriguez's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

On appeal, Rodriguez argues that the district court erred by denying his petition as procedurally barred. In its order, the district court found that Rodriguez did not allege good cause and prejudice in his petition. This finding is supported by the record. Rodriguez's petition is silent as to good cause and prejudice for filing the untimely petition. On appeal,

---

<sup>1</sup>We note the judgment of conviction was filed on March 25, 2022, but was dated "nunc pro tunc to March 23, 2022." Regardless of the date of the filing of the judgment of conviction, Rodriguez filed his petition more than one year after the filing of the judgment of conviction.

Rodriguez argues that he attempted to file a timely petition, but it was returned unfiled because he failed to sign the petition. He then alleges that he re-sent his petition for filing with his signature on March 29, 2023, after the one-year time period had run. Thus, by his own admission, he could have alleged good cause on the face of the petition. *See Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021) (holding that a “petitioner’s explanation of good cause and prejudice for each procedurally barred claim must be made on the face of the petition”). Therefore, we conclude that the district court did not err by dismissing Rodriguez’s petition as procedurally barred.

Rodriguez also argues that the district court erred by finding that he did not file a reply to the State’s opposition. He alleges he filed a reply and received a file-stamped copy of the reply. Rodriguez’s reply is not in the record on appeal, and it appears the district court did not receive a copy of the reply. Therefore, it was not error for the district court to find that Rodriguez did not file a reply.

Finally, Rodriguez appears to argue that the district court abused its discretion by denying his motion to appoint 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 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). Because Rodriguez claimed he was indigent and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Rodriguez met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-*

*Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the petition was procedurally time barred, the issues in this matter were not difficult, and discovery with the aid of counsel was not necessary. In light of these circumstances, we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Lynne K. Jones, Chief Judge  
Abimael Rodriguez  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk