


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER FRANCO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87143-COA

**FILED**

**AUG 27 2024**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Christopher Franco appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 13, 2022, and supplement. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Franco filed his petition over one year after issuance of the remittitur on direct appeal on May 11, 2021. *See Franco v. State*, No. 81554-COA, 2021 WL 1529121 (Nev. Ct. App. Apr. 16, 2021) (Order of Affirmance). Thus, Franco's petition was untimely filed. *See* NRS 34.726(1). Franco's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* “In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Franco claimed he had cause for the delay because appellate counsel never informed him that his direct appeal had been denied and that

remittitur had issued. Franco contended that his parents discovered that his appeal had been denied in January of 2022 when they contacted a different attorney.

The district court held an evidentiary hearing on this good-cause claim, during which appellate counsel, Franco, and Franco's mother testified. Thereafter, the district court determined that appellate counsel's alleged failure to inform Franco that the appeal had been denied did not constitute an impediment external to the defense. We agree. *Cf. Sullivan v. State*, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) (concluding petitioner's good-cause claim—that counsel did not send him a copy of the remittitur or the corrected judgment and did not tell petitioner he had one year from the remittitur to seek postconviction relief—did not demonstrate an impediment external to the defense sufficient to overcome the procedural time bar). However, even assuming counsel failed to inform Franco that the appeal had been denied, and that this failure constituted an impediment external to the defense, Franco testified that his parents informed him that his appeal had been denied in February or March of 2022, approximately two to three months before the deadline for filing his petition. Franco did not allege that an impediment external to the defense prevented him from filing his petition during this time period.<sup>1</sup> Therefore, we conclude the district court did not err by denying the petition as procedurally barred. *See*

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<sup>1</sup>Franco argues on appeal that two months is not enough time to file a pro se postconviction habeas petition. Franco did not raise this argument in his petition below, and we decline to consider it on appeal in the first instance. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

*id.* at 252-53, 71 P.3d at 506 (“In terms of a procedural time-bar, an adequate allegation of good cause would sufficiently explain why a petition was filed beyond the statutory time period.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Ronald J. Israel, District Judge  
Jean J. Schwartzer  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk