

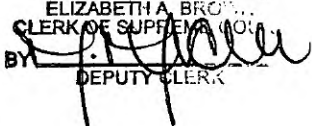
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY DURAN HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88223-COA

FILED

JAN 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Duran Howard appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 5, 2021, and a supplemental petition filed on May 23, 2023. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Howard filed his petition more than four years after entry of the judgment of conviction on December 23, 2016.¹ Thus, Howard's petition was untimely filed. *See* NRS 34.726(1). Howard's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* To demonstrate good cause to overcome the procedural bars, a petitioner must offer a legal excuse by showing “that an impediment external to the defense prevented him . . . from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). “An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available . . . or that some interference by officials made

¹Howard did not appeal from his judgment of conviction.

compliance impracticable.” *Id.* (internal quotation marks and punctuation omitted). A petitioner is entitled to an evidentiary hearing on his good cause claim if it is “supported by specific facts not belied by the record, which if true, would entitle him to relief.” *Id.* at 254-55, 71 P.3d at 507-08.

First, Howard argues the district court erred by denying his claim that he had good cause for the delay because he was denied access to the law library. Howard argued in his petition that, when he was first transferred to prison, he was held in administrative segregation where he was not allowed to access the law library. He also claimed that he was subsequently transferred to another prison and was again held in administrative segregation without access to the law library. However, Howard failed to allege how long he was held in administrative segregation. Thus, he failed to allege sufficient facts to demonstrate good cause for the entire length of his delay or that an impediment external to the defense prevented him from complying with the procedural default rules. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Howard argues the district court erred by denying his claim that he had good cause for the delay because of his intellectual difficulties. In his petition, Howard alleged that his low IQ and his mental health issues prevented him from complying with the procedural requirements for filing a postconviction habeas petition. This claim did not provide good cause to overcome the procedural time bar. *See Phelps v. Dir., Nev. Dep't. of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a petitioner’s claim of organic brain damage, borderline mental disability, and reliance on the assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a procedurally

barred postconviction habeas petition), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).² Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Howard argues the district court erred by denying his claim that he had good cause for the delay because he lacked the legal knowledge to file a timely postconviction habeas petition. In his petition, he alleged that counsel failed to inform him regarding his postconviction remedies, and this failure caused him to file his petition late.³ Howard's lack of legal knowledge did not constitute good cause to overcome the procedural bar. *See Phelps*, 104 Nev. at 660, 764 P.2d at 1306. Further, Howard fails to demonstrate that counsel had a constitutional duty to inform him of his postconviction remedies. *See Hathaway*, 119 Nev. at 252,

²We disagree with Howard's contention that the district court relied on an overly broad interpretation of *Phelps*. Further, Howard argues federal equitable tolling standards should excuse the procedural bars and invites us to adopt those standards. However, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 "requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *See Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 874 (2014). Thus, we decline Howard's invitation to adopt equitable tolling standards.

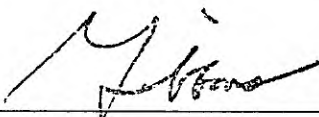
³Howard also appeared to argue that his lack of access to his case file prevented him from filing a timely postconviction habeas petition. The lack of access to a petitioner's case file does not provide good cause. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Further, although Howard's one-year deadline was in late 2017, Howard waited until November of 2020 to request his case file from counsel and then filed the instant petition before receiving said file from counsel. Thus, Howard failed to demonstrate that he had good cause for the entire length of the delay or that he needed his case file before filing his petition.

71 P.3d at 506 (recognizing that good cause must afford a legal excuse); *see also Sullivan v. State*, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) (holding trial counsel's failure to inform a petitioner of the timing for the filing of a postconviction petition did not constitute good cause to overcome the procedural time bar). Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Howard argues the district court erred by denying his claim that he had good cause for the delay because of the lockdown procedures put in place due to COVID-19. The lockdown procedures were put in place in 2020, more than two years after the deadline passed for filing a timely petition. Thus, Howard fails to demonstrate the lockdown provided good cause for filing an untimely petition. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁴Because Howard failed to overcome the procedural bar, we do not reach the merits of the claims raised in his petition.

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