

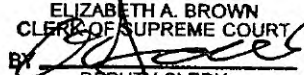
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK M. GERNERT,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND WARDEN
OLSEN,
Respondents.

No. 89059-COA

FILED

JAN 27 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jack M. Gernert appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 1, 2022. Eleventh Judicial District Court, Mineral County; Jim C. Shirley, Judge.

Gernert filed his petition more than 38 years after entry of the judgment of conviction on June 14, 1984.¹ *See Gernert v. State*, No. 35459 (Nev. Jan. 16, 2001) (Order of Affirmance). Gernert's petition was untimely filed² and thus procedurally barred absent a demonstration of good cause—

¹Gernert did not timely appeal from the judgment of conviction. *See Gernert v. State*, No. 35459 (Nev. Jan. 16, 2001) (Order of Affirmance); *see also Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding that the “one-year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a *timely* direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken”).

²In addition, Gernert filed his petition more than 29 years after the effective date of NRS 34.726. *See* 1991 Nev. Stat., ch. 44 §§ 5, 33, at 75-76, 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001),

cause for the delay and undue prejudice. *See* NRS 34.726(1). 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 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.

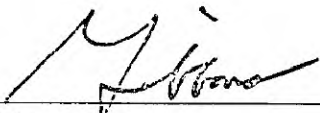
Gernert argued the Nevada Supreme Court’s decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021), provided good cause because it was the first time the court held that a defendant who pleaded guilty could raise postconviction claims regarding counsel’s effectiveness at sentencing and because *Gonzales* stated that such claims could be brought at any time. *Gonzales* did not create new law; instead, *Gonzales* merely clarified that NRS 34.810(1)(a) never precluded claims that counsel rendered ineffective assistance at sentencing. 137 Nev. at 403, 492 P.3d at 562 (“In sum, we explicitly hold today what has been implicit in our caselaw for decades.”); *see also Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) (“A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.”); *Nika v. State*, 124 Nev. 1272, 1286, 198 P.3d 839, 849 (2008) (discussing when a “state court interpretation of a state

abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018).

criminal statute constitutes a change in—rather than a clarification of—the law”). Therefore, Gernert has not shown that *Gonzales* provides good cause for the delay in filing his instant petition.³ And contrary to Gernert’s assertion, *Gonzales* did not provide that such claims could be raised at any time.⁴ Accordingly, Gernert failed to demonstrate good cause to overcome the procedural bar. We therefore conclude the district court did not err by denying Gernert’s petition as procedurally barred without holding an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³To the extent Gernert contended he did not know he could raise postconviction claims challenging counsel’s performance at sentencing until after *Gonzales*, such a contention is not an impediment external to the defense and does not provide good cause. See *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).

⁴We note that Gernert filed his petition more than one year after *Gonzales* was decided. Therefore, even assuming Gernert’s claims were not available until *Gonzales* issued, Gernert did not raise his claims based on *Gonzales* within a reasonable time after they became available. See *Rippo*, 134 Nev. at 422, 423 P.3d at 1097 (concluding that a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available).

cc: Hon. Jim C. Shirley, District Judge
Jack Michael Gernert
Attorney General/Carson City
Mineral County District Attorney
Clerk of the Court/Court Administrator