IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HALLET BRUCE ELSON,
Appellant,
vs.
JOHN HENLEY, WARDEN; AND THE STATE OF NEVADA,
Respondents.

No. 89153-COA

FILED

MAY 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Hallet Bruce Elson appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 21, 2024. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Elson filed his petition more than two years after entry of the judgment of conviction on January 31, 2022. Thus, Elson's petition was untimely filed. *See* NRS 34.726(1). Elson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see id.*—or a showing that he was actually innocent such that "the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice," *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Elson alleged he had good cause to overcome the procedural bar. To establish 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). "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 to counsel, or that some interference by officials,

25-22688

made compliance impracticable." *Id.* (internal quotation marks omitted). "We give deference to the district court's factual findings regarding good cause, but we will review the court's application of the law to those facts de novo." *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

First, Elson claimed he had good cause because he lacked legal knowledge and his efforts to pursue postconviction relief were hindered by a lack of access to legal resources inherent to incarceration, including visitation, finances, a law library or caseworkers, and privacy. Elson's lack of legal knowledge and a lack of access to legal resources due to his incarceration did not constitute good cause because they were not impediments external to the defense. *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 assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a procedurally barred postconviction petition), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Further, the district court found that Elson admitted he was aware of the grounds he set forth in his petition at the time of sentencing. Elson does not challenge this finding on appeal. Therefore, we conclude Elson is not entitled to relief based on this good-cause claim.

Second, Elson claimed he had good cause because trial-level counsel was ineffective. Elson alleged that counsel failed to advise him on legal issues that impacted Elson's ability to file his petition, exercise diligence, and communicate with him. Elson further alleged that counsel abandoned him after sentencing and provided no postconviction assistance. Elson failed to demonstrate why this good-cause claim could not have been

brought in a timely petition. Thus, this good-cause claim was itself untimely and did not constitute cause for Elson's delay. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (holding a good-cause "claim itself must not be procedurally defaulted"). Therefore, we conclude Elson is not entitled to relief based on this good-cause claim.

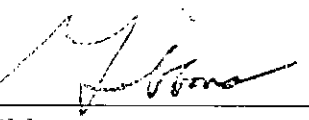
Third, Elson appeared to claim he had good cause because he lacked postconviction counsel. Elson was not entitled to the assistance of postconviction counsel because his case was a noncapital case. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Thus, to the extent he alleged the lack of appointed postconviction counsel constituted good cause to overcome the procedural bar, we conclude he was not entitled to relief based on this claim.

Elson also alleged he could overcome the procedural bar because he is actually innocent based on the following evidence: (1) "two direct eyewitness accounts exonerating" him; (2) "Claimant's forensic testimony [which] is riddled with discrepancies and inconsistencies"; (3) favorable DNA evidence; and (4) a psychological evaluation completed prior to sentencing which was "very positive," concluding "zero risk." Elson failed to explain who the eyewitnesses were or what their exonerating testimony would be. He also failed to describe the discrepancies and inconsistencies or the DNA evidence and explain how this evidence supported his claim of actual innocence. Finally, Elson offered no explanation of how the evaluation supported his claim other than it being positive and its conclusion that there was "zero" risk he would reoffend. In light of these circumstances, Elson did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*,

523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). We therefore conclude the district court did not err by denying Elson's petition as procedurally barred. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. John Schlegelmilch, District Judge
Hallet Bruce Elson
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk

[1]To the extent Elson attempts to support the claims raised in his petition by adding facts or argument on appeal, we decline to consider these facts or argument for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).