

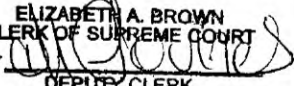
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ROSAS,
Appellant,
vs.
TERRY ROYAL, WARDEN AND THE
STATE OF NEVADA,
Respondents.

No. 90894-COA

FILED

FEB 10 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Rosas appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 2, 2025. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Rosas argues the district court erred by denying his petition as procedurally barred without conducting an evidentiary hearing on his good-cause claims. Rosas filed his petition more than 12 years after entry of the judgment of conviction on April 1, 2013.¹ Thus, Rosas' petition was untimely filed. *See* NRS 34.726(1). Rosas' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Further, because the State specifically pleaded laches, Rosas was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2). To warrant an evidentiary hearing, Rosas was required to allege “specific facts not belied by the record, which if true, would entitle him to relief.” *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003).

¹Rosas did not file a direct appeal.

In his petition, Rosas claimed he had good cause for the delay because counsel failed to inform him of his right to seek postconviction relief. 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.” *Id.* at 252, 71 P.3d at 506. Counsel’s purported failure to inform Rosas of his right to seek postconviction relief does not constitute an impediment external to the defense that may excuse an untimely petition.² *See Sullivan v. State*, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) (holding a petitioner’s claim that counsel failed to inform them that they had one year from the issuance of remittitur on direct appeal to seek postconviction relief did not constitute good cause). Therefore, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Rosas also claimed he had good cause for the delay because the United States Supreme Court’s decision in *Garza v. Idaho*, 586 U.S. 232 (2019), was not reasonably known or available to him within the statutory time period. “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of any default.” *Rippo v. State*, 134 Nev. 411, 419, 423 P.3d 1084, 1095 (2018) (quotation marks omitted). However, a postconviction habeas petition must be filed within a reasonable time after the factual or legal basis for the claim becomes available. *See id.* at 422, 423 P.3d at 1097 (“Using a . . . one-year

²To the extent Rosas contended that counsel failed to inform him of his right to a direct appeal, this also does not constitute good cause to excuse the procedural time-bar. *See id.* at 253, 71 P.3d at 507 (clarifying that “an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period,” which includes “claims that counsel failed to inform the petitioner of the right to appeal”).

boundary for what is a reasonable time within which to file a petition raising a postconviction-counsel claim that was not factually or legally available at the time of a procedural default under NRS 34.726 also provides some fairness and predictability.”).

Even assuming this decision could provide good cause to excuse the procedural time-bar, Rosas filed his petition more than six years after that decision was issued. Although Rosas contended that he was unaware of the decision, that he did not understand the procedures applicable to postconviction habeas petitions or how to prepare such a pleading, and that “most inmate law clerks do not know anything about the law,” Rosas’ lack of legal knowledge and reliance on an inmate law clerk do not constitute good cause to excuse the delay. *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), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).

Contrary to Rosas’ claim, a prison law library need not provide inmates with notice or copies of new appellate court decisions; rather, a prison law library, if one is established,³ need only “provide[] indigent inmates with a sufficient basic foundation for the preparation of legal actions.” *Miller v. Evans*, 108 Nev. 372, 374, 832 P.2d 786, 787-88 (1992). And to the extent Rosas contended that his access to the prison law library

³We note that inmates do not have a “freestanding right to a law library or legal assistance” and that a prison law library is but one way of ensuring that inmates have “a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.” *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (quotation marks omitted).

was limited, he failed to allege specific facts indicating “that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue” his claim for more than six years. *Lewis v. Casey*, 518 U.S. 343, 351 (1996); *cf. Hathaway*, 119 Nev. 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.”). Therefore, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

In light of the foregoing, Rosas failed to demonstrate good cause to overcome the procedural bars. Moreover, he failed to overcome the presumption of prejudice to the State. Therefore, we conclude the district court did not err in denying Rosas’ petition as procedurally barred and barred by laches without conducting an evidentiary hearing. *See State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory”).

Rosas also argues the district court erred in failing to appoint counsel to assist him in developing his good-cause claims. 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. *See id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Although Rosas claimed he had a limited understanding of the legal proceedings, his petition cogently presented his good-cause claims, and those claims did not present difficult issues or

require discovery with the aid of counsel. For these reasons, we conclude the district court did not abuse its discretion by declining to appoint counsel.

Rosas also argues the district court failed to make its own findings of fact or conclusions of law when it adopted the State's proposed order. In its June 12, 2025, minute order, the district court provided its findings of fact and conclusions of law and ordered the State to prepare the written order. A district court may request a party to submit proposed findings of facts and conclusions of law, *see Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007), and the district court ordered the State to prepare the written order in accordance with the local rules, *see* EDCR 1.90(a)(4) (stating "the prevailing party shall submit a written order to the judge"); EDCR 7.21 (requiring the prevailing party to provide the court with a draft order or judgment). Further, because Rosas fails to demonstrate he was entitled to relief for the reasons discussed above, he likewise fails to demonstrate the alleged error impacted his substantial rights. *See* NRS 178.598. Therefore, we conclude Rosas is not entitled to relief on this claim.

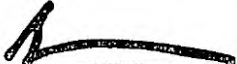
Finally, Rosas argues the district court erred in failing to consider his reply to the State's response and opposition to the State's motion to dismiss. In particular, Rosas contends that he mailed his reply and opposition on June 5, 2025, that the district court clerk received his reply and opposition on June 11, 2025, but that the clerk failed to file his reply and opposition until July 1, 2025.

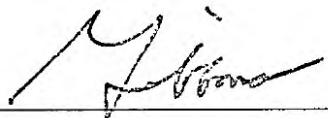
Absent the appointment of counsel, a petitioner may not file additional pleadings "except as ordered by the court." NRS 34.750(3), (5). Rosas does not contend, and the record does not reveal, that he requested and received the district court's permission to file a reply to the State's response. Thus, Rosas was not entitled to file such a reply. And although

Rosas was entitled to respond to the State's motion to dismiss, *see* NRS 34.750(4), his opposition was untimely regardless of the clerk's actions because he mailed his opposition 28 days after the State served its motion on May 8, 2025. *See* NRS 34.750(4) ("The petitioner shall respond within 15 days after service to a motion by the State to dismiss the action."). Therefore, we conclude the district court did not err in failing to consider Rosas' reply or opposition.

For the foregoing reasons,⁴ we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
David Rosas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴To the extent Rosas raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.