

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAAC ASUSTA,
Appellant,
vs.
JAMES "GREG" COX, DIRECTOR OF
THE DEPARTMENT OF
CORRECTIONS,
Respondent.

No. 64209

FILED

DEC 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant filed his petition on June 27, 2012, more than one year after issuance of the remittitur on direct appeal on June 20, 2011. *Asusta v. State*, Docket No. 53053 (Order of Affirmance, May 26, 2011). Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1); *Gonzales v. State*, 118 Nev. 590, 593-94, 53 P.3d 901, 902-03 (2002). "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

Appellant did not attempt to provide cause for the delay. Accordingly, appellant failed to meet his burden to overcome the procedural bar. See *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676,

681 (2003). Therefore, the district court did not err in denying the petition.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Saitta

cc: Hon. Steve L. Dobrescu, District Judge
Thomas Michaelides
Sears Law Firm, Ltd.
Attorney General/Carson City
White Pine County Clerk

¹The district court denied the petition on the merits, but as discussed previously, should have denied the petition as procedurally barred. However, we affirm because the district court reached the right result in denying the petition. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).