

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65075

FILED

MAY 13 2014

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying and dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant filed his petition on October 23, 2013, more than one year after entry of the judgment of conviction on February 2, 2012. 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).

Appellant claimed he had cause for the delay because he lacked legal knowledge to file a timely petition. Appellant failed to demonstrate an impediment external to the defense that prevented him from filing his claims in a timely petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). We note that appellant filed the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

same claims regarding his habitual criminal adjudication in a motion to modify sentence filed on December 19, 2012, which had it been filed as a post-conviction petition for a writ of habeas corpus, would have been timely. Therefore, appellant failed to demonstrate cause for the delay.

Appellant also claimed that he could overcome the procedural bar because he was actually innocent of the habitual criminal adjudication because the State failed to provide certified copies of his prior convictions. Appellant 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); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Carolyn Ellsworth, District Judge
Robert Earl Wright
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk