

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARNEL ANN SILVEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72703

**FILED**

APR 11 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Sharnel Ann Silvey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


Silvey was convicted of exploitation of an older person, embezzlement, and theft. Her conviction was affirmed on appeal, and the remittitur issued on March 12, 2013. Silvey moved for the appointment of counsel, and counsel was appointed. Ultimately, counsel filed a document titled "Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)" on December 22, 2015. Shortly before a hearing on the petition, the State filed a motion to dismiss the petition because Silvey failed to file her petition within one year of the remittitur issuing. In response to the State's motion to dismiss, Silvey claimed she had good cause to excuse her untimely filing because she had submitted a timely petition for mailing from prison and she did not know why that petition was not filed.

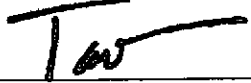
After holding an evidentiary hearing, the district court found Silvey failed to demonstrate she filed or attempted to file a timely petition. Specifically, the court found Silvey did not produce a file-stamped copy of the petition or a copy of the petition she claims she wrote, and neither of her postconviction counsel have ever seen or been in possession of a timely filed or unfiled petition. Therefore, because Silvey could not provide any proof she prepared or attempted to file a timely petition, she failed to demonstrate an impediment external to the defense prevented her from filing a timely petition. On appeal, Silvey argues the district court erred by denying her petition as procedurally barred.

Initially, we note the district court lacked jurisdiction to entertain Silvey's petition. Pursuant to the facts presented here, Silvey expired her sentence in 2014. No petition was filed on her behalf until 2015. Because Silvey was not under a sentence of imprisonment when the petition was filed, the district court lacked jurisdiction over the petition. *See* NRS 34.724(1); *Jackson v. State*, 115 Nev. 21, 23, 973, P.2d 241, 242 (1999). Nevertheless, the district court properly denied relief, and we therefore affirm the denial of the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or final order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Further, as a separate and independent ground to deny relief, substantial evidence supports the district court's decision. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). No petition was produced by Silvey at the evidentiary hearing. Further, Silvey failed to produce evidence demonstrating she attempted to mail anything during the time period at issue. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Chief Judge, Second Judicial District Court  
Richard F. Cornell  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk