

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOE L. CLARY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72728

FILED

FEB 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joe L. Clary appeals from an order of the district court denying the motion for credit against sentence and amended judgment of conviction he filed on July 19, 2016, and the supplemental postconviction petition for a writ of habeas corpus he filed on September 16, 2016.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Clary filed his petition more than one year after entry of the judgment of conviction on April 14, 2015.² Thus, Clary's petition was untimely filed. *See* NRS 34.726(1). Clary's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

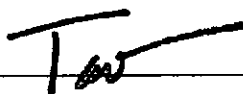
The district court construed Clary's motion for credit to be a postconviction petition for a writ of habeas corpus and ordered him to file a supplement that conformed with the procedural requirements of NRS chapter 34.


²Clary did not pursue a direct appeal from his judgment of conviction.

Clary claimed he had good cause to overcome the procedural time bar because counsel misinformed him about how his credits would apply and he did not realize the information was incorrect until after the one-year deadline had passed. Clary failed to demonstrate good cause to overcome the procedural bars. Clary's ineffective assistance of counsel claim did not provide good cause because the claim itself was procedurally time barred. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, the fact Clary was only given 23 days of credit for time served was known to him at the time of sentencing, and therefore, this claim was available to be raised in a timely filed petition. *See id.* Accordingly, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Joe L. Clary
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk