


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID VILLEGAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74658

FILED

OCT 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

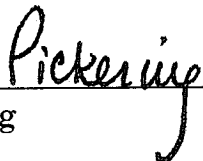
Appellant filed his petition on August 30, 2016, more than one year after issuance of the remittitur on direct appeal on February 19, 2015. *Villegas v. State*, Docket No. 59383 (Order Affirming in Part and Reversing in Part, September 24, 2014). Thus, appellant's petition was untimely filed and procedurally barred absent of showing of cause for the delay and undue prejudice. *See* NRS 34.726(1).


Appellant argued that his delay should be excused because he had filed a petition in federal court first on the advice of an inmate law clerk. We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (recognizing that to demonstrate good cause a petitioner must demonstrate that an impediment external to the defense prevented him from complying with state procedural

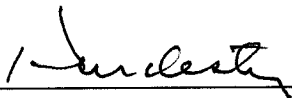
¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(f)(3).

default rules); *see also Phelps v. Director, Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (rejecting poor inmate law clerk assistance as good cause); *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (determining that pursuit of a federal habeas petition did not provide good cause). We further conclude that the district court did not err in determining that appellant failed to demonstrate that he would be unduly prejudiced by the denial of his petition as procedurally barred. *See State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012) (recognizing that to show undue prejudice, “a petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner’s actual and substantial disadvantage”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Pickering


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Valerie Adair, Dist. Judge
David Villegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We conclude that the district court did not err in denying the petition without an evidentiary hearing and did not abuse its discretion in denying appellant’s motion to appoint postconviction counsel. *See NRS 34.750(1); Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).