

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69036

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his postconviction petition on September 15, 2014, more than one year after the remittitur issued on direct appeal on July 23, 2013.¹ *O'Keefe v. State*, Docket No. 61631 (Order of Affirmance, April 10, 2013). Therefore, the petition was untimely filed and procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1).

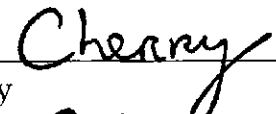
As cause to overcome the procedural default, appellant argues that counsel was ineffective for not filing a motion for a stay of the remittitur in his direct appeal. Had counsel done so, he contends, his postconviction petition would have been timely under NRS 34.726. Counsel's failure to seek a stay of the remittitur is not an impediment


¹The district court appointed counsel to represent appellant in the postconviction proceedings. See NRS 34.750.

external to the defense that prevented appellant from timely filing his postconviction petition. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Because appellant failed to establish good cause to excuse the delay in filing his petition, the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have considered the pro se document filed in this court on April 7, 2016, and conclude that no relief is warranted.