

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRADFORD TRUMAN HINES,
Appellant,
vs.
GREGORY SMITH, WARDEN, NEVADA
DEPARTMENT OF CORRECTIONS
(THE STATE OF NEVADA),
Respondent.

No. 77436-COA

FILED

NOV 05 2019

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

ORDER OF AFFIRMANCE

Bradford Truman Hines appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Hines filed his petition on December 19, 2011, more than one year after issuance of the remittitur on direct appeal on December 3, 2010. *Hines v. State*, Docket No. 56409 (Order of Affirmance, November 8, 2010). Thus, Hines' petition was untimely filed. See NRS 34.726(1). Hines' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* To warrant an evidentiary hearing, a petitioner must allege specific facts that, if true and not belied by the record, would entitle him to relief. *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

First, Hines argued he had cause for the delay because his appellate counsel for his direct appeal failed to properly advise him of the filing deadline for a postconviction petition for a writ of habeas corpus. A defendant has no right to advice regarding habeas relief from direct appeal counsel, see *Miranda v. Castro*, 292 F.3d 1063, 1068 (9th Cir. 2002), and

Hines did not demonstrate an impediment external to the defense prevented him from filing a petition in a timely manner, *see Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Moreover, Hines included with his petition a letter from his appellate counsel in which counsel advised Hines he had one year from the resolution of his direct appeal to pursue postconviction relief. In the letter, counsel also stated he was including a sample postconviction petition that Hines could utilize when drafting his own petition. Despite the information provided by counsel, Hines filed his petition more than a year after the timely-filing deadline. Under these circumstances, Hines failed to demonstrate he had cause for his delay. Therefore, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Second, Hines claimed he had cause for the delay because he was held in federal custody for a time and was without access to Nevada state legal materials. “[A]n inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.” *See Lewis v. Casey*, 518 U.S. 343, 351 (1996). Rather, a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *See id.*

As stated previously, Hines included a letter from his appellate counsel in which counsel informed Hines he had to pursue postconviction relief within one year of the resolution of his direct appeal and counsel provided Hines with a sample postconviction petition to utilize. Hines did not identify any information he was unable to obtain due to his housing in federal custody, and he did not explain why the information and material

supplied by his appellate counsel were insufficient for him to pursue postconviction relief. Therefore, Hines failed to demonstrate a lack of access to Nevada state legal materials provided cause for his delay. Accordingly, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Alvin R. Kacin, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk