

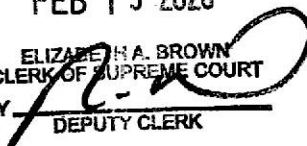
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARNOLDO RODELO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78455-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Arnoldo Rodelo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Senior Judge.

Rodelo filed his petition on September 21, 2018, more than one year after entry of the judgment of conviction on August 2, 2018.¹ Thus, Rodelo's petition was untimely filed. *See* NRS 34.726(1). Rodelo's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, Rodelo claimed he had cause for the delay because he is not proficient in the English language and the prison legal assistants are not properly trained. Rodelo asserted he was only able to file a petition after he came into contact with a fellow inmate that understood the legal process. Rodelo's alleged language barrier did not provide cause for the delay in this case as he did not attempt to demonstrate he was unable to procure either legal materials in his own language or translation assistance during the timely filing period despite his diligent efforts. *See Mendoza v. Carey*, 449

¹Rodelo did not pursue a direct appeal.



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F.3d 1065, 1070 (9th Cir. 2006); *see also Lewis v. Casey*, 518 U.S. 343, 351 (1996) (“an 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”). In addition, Rodelo’s reliance upon a fellow inmate was not an impediment external to the defense which prevented him from complying with the procedural time bar. *See generally Phelps v. Dir., Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner’s claim of organic brain damage, borderline mental retardation and reliance on assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition). Therefore, the district court did not err by denying Rodelo’s petition as procedurally barred.

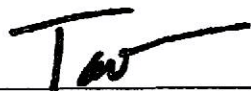
Next, Rodelo argues the district court erred by denying the petition without appointing postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). A review of the record reveals the issues in this matter were not difficult, Rodelo was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See id.* Therefore, Rodelo fails to demonstrate the district court abused its discretion by denying the petition without appointing postconviction counsel. *See Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

Finally, Rodelo argues the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an

evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Rodelo's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. James M. Bixler, Senior Judge
Arnoldo Rodelo
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk