

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBIN NE CHELLE PROCTOR, A/K/A
ROBIN NECHELLE PROCTOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80998-COA

FILED

FEB 12 2021

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

ORDER OF AFFIRMANCE

Robin Ne Chelle Proctor appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus, filed on February 8, 2019, and a later-filed supplement. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Proctor contends the district court erred by denying her petition as procedurally time barred without conducting an evidentiary hearing. Proctor filed her petition more than one year after entry of the judgment of conviction on July 10, 2017.¹ See NRAP (4)(b)(4) (defining “entry” of a judgment as “when it is signed by the judge and filed with the clerk”). Proctor’s petition was untimely filed and, thus, procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1).


¹An amended judgment of conviction was filed on July 28, 2017, to correct a clerical error. Because none of the claims raised in Proctor’s petition were relevant to this correction, the time to file her postconviction petition for a writ of habeas corpus began to run with the filing of the original judgment of conviction. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Proctor claimed she could demonstrate good cause because she attempted to file a timely motion for enlargement of time in which to file a postconviction petition for a writ of habeas corpus, counsel did not inform her the motion was not filed, and counsel did not file the motion on her behalf. In her motion for enlargement of time, Proctor claimed her mental health issues prevented her from filing a timely petition. Proctor's motion was dated July 26, 2018. It was itself untimely and, thus, would not have demonstrated good cause. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). For the same reason, any suggestion that counsel's failure to inform Proctor of the status of the motion or to file it on her behalf also failed to overcome the procedural defect. And, to the extent Proctor suggested her mental health issues could provide good cause to overcome the procedural bars, her claim lacked merit. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

For these reasons, we conclude the district court did not err by denying Proctor's petition as procedurally time barred without conducting an evidentiary hearing. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015) (stating the standard for an evidentiary hearing on claims to overcome procedural bars); *Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1233 n.53 (2008) (providing a court may deny substantive postconviction claims where a petitioner cannot overcome procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Jeannie N. Hua
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk