

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WARITH DEEN ABDULLAH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81774-COA

FILED

MAY 14 2021

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

ORDER OF AFFIRMANCE

Warith Deen Abdullah appeals from an order of the district court denying in part and dismissing in part a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Abdullah filed his petition on May 27, 2020, more than 12 years after issuance of the remittitur on direct appeal on March 4, 2008. *Abdullah v. State*, Docket No. 49374 (Order of Affirmance, February 8, 2008). Thus, Abdullah's petition was untimely filed. See NRS 34.726(1). Abdullah's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see id.*, or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, Abdullah was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

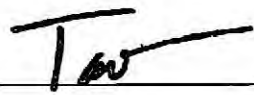
Abdullah claimed his counsel failed to pursue a direct appeal and appeared to assert he was entitled to additional presentence credits. However, Abdullah did not demonstrate an impediment external to the

defense prevented him from raising these claims in a timely-filed petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Abdullah also did not attempt to overcome the rebuttable presumption of prejudice to the State. Therefore, the district court did not err by denying the portion of Abdullah's petition challenging his judgment of conviction as procedurally barred.

Next, Abdullah contended that the Nevada Department of Corrections improperly calculated his credit for time served. The district court properly resolved the portion of the petition challenging the judgment of conviction and found a challenge to the computation of time served cannot be raised in a postconviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. *See* NRS 34.738(3). The district court properly dismissed Abdullah's challenge to the computation of time served without prejudice, and Abdullah may separately file a postconviction petition for a writ of habeas corpus challenging the computation of time served in the county in which he is incarcerated. *See* NRS 34.724(1); NRS 34.730(2); NRS 34.738(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 5
Warith Deen Abdullah
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk