

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO C. DURAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81848

FILED

NOV 10 2021

ELIZABETH A. BROWN
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.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

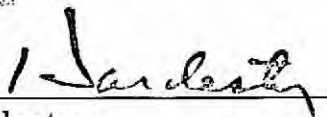
Appellant filed his petition on June 8, 2020, almost 8 years after issuance of the remittitur on direct appeal on October 10, 2012. *Durand v. State*, Docket No. 60083 (Order of Affirmance, September 13, 2012). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause: cause for the delay and undue prejudice. See *id.* "[T]o demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred. Appellant's unspecified mental health issues and lack of legal knowledge

¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

are not impediments external to the defense, and thus, they do not provide good cause. *Phelps v. Director*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Appellant's claims of ineffective assistance of trial and appellate counsel likewise do not provide good cause because those claims themselves are procedurally barred. *Hathaway*, 119 Nev. at 252, 71 P.3d at 506. Appellant's claim of alleged judicial misconduct could have been raised in a timely petition, and he has not provided any explanation for his failure to do so. And this court has rejected equitable tolling because the plain language of NRS 34.726 requires appellant to demonstrate good cause to excuse a late petition. *Brown v. McDaniel*, 130 Nev. 565, 575-76, 331 P.3d 867, 874 (2014). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Hardesty


_____, J.
Cadish


_____, Sr.J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Roberto C. Durand
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.