

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASEY ALAN JOHNS,
Appellant,
vs.
WARDEN PERRY RUSSELL,
Respondent.

No. 84305-COA

FILED

OCT 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Casey Alan Johns appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 22, 2021, and an amended petition filed on January 6, 2022. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Johns argues the district court erred by denying his petition as procedurally barred. Johns filed his petition more than one year after entry of the judgment of conviction on June 24, 2020.¹ Thus, Johns' petition was untimely filed. *See* NRS 34.726(1). Johns' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, Johns claimed that the procedural time bar should not apply because his 2021 petition and supplement should relate back to a petition he filed on September 8, 2020. "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d

¹Johns did not pursue a direct appeal.

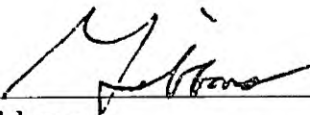
1070, 1074 (2005). The district court denied Johns' 2020 petition in an order filed on November 10, 2020. Johns' 2021 petition and supplement initiated an entirely new postconviction proceeding and raised claims not included in the 2020 petition. Thus, Johns' 2021 petition and supplement did not relate back to an already-denied petition. Therefore, the district court did not err by applying the procedural time bar to Johns' petition, and Johns is not entitled to relief based on this claim.

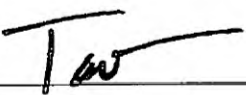
Second, Johns appeared to claim he had cause for his delay because he is not trained in the law and relies on others for help with legal matters. However, those issues did not constitute an impediment external to the defense that prevented Johns from timely filing his petition. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Therefore, Johns is not entitled to relief based on this claim.

Next, Johns claims the district court erred by denying his petition without appointing postconviction counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). The issues in this matter were not difficult, Johns was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Therefore, we conclude the district court did not

abuse its discretion by declining to appoint postconviction counsel.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas L. Stockard, District Judge
Casey Alan Johns
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk