

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMON SAMERI CHANEY, A/K/A
DAMON SAMARI CHANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85029-COA

FILED

JAN 31 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Damon Sameri Chaney appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on March 2, 2022,¹ and a motion to modify and/or correct an illegal sentence filed on June 10, 2022. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Postconviction petition for a writ of habeas corpus

Chaney filed his petition more than one year after entry of the judgment of conviction on July 1, 2020. Thus, Chaney's petition was untimely filed. See NRS 34.726(1). Chaney's petition was procedurally

¹Chaney filed a "motion to submit on behalf of defendant" on March 2, 2022. To it, Chaney attached a "motion for defendant's presentence investigation report to be corrected," dated January 27, 2022, as exhibit one and a petition for a writ of habeas corpus, dated February 14, 2022, as exhibit two. The district court implicitly granted the motion to submit by considering both of the attached pleadings. The district court construed exhibit one as a petition for a writ of habeas corpus, and Chaney does not argue the district court erred by doing so. Therefore, all references to Chaney's petition for a writ of habeas corpus in this order refer to both of the pleadings attached to the aforementioned motion to submit.

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).

Chaney claimed he had good cause for the delay because he could not contact counsel and counsel did not advise him that he could file a petition for a writ of habeas corpus. Chaney’s inability to contact counsel and lack of legal knowledge did not constitute good cause because they were not impediments external to the defense. *See Phelps v. Dir., Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a petitioner’s claim of organic brain damage, borderline mental disability, and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a procedurally barred postconviction petition), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Accordingly, we conclude the district court did not err by denying the petition as procedurally barred.

Motion to modify and/or correct an illegal sentence

In his motion to modify and/or correct an illegal sentence, Chaney claimed he was released on his own recognizance, he was improperly detained and placed on house arrest, and he should receive additional credit for time served.

“[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). A motion to correct an illegal sentence

may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *Id.* The district court may summarily deny a motion to modify or correct an illegal sentence if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.


Without considering the merits of Chaney's claims, we conclude they fall outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. Accordingly, we conclude the district court did not err by denying the motion.

For the foregoing reasons, we

ORDER the judgments of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²On January 3, 2023, Chaney filed a document in this court arguing the district court erroneously granted him a total of 32 days' credit for time served instead of 34 days' credit for time served. To the extent Chaney attempts to present claims or facts in this submission which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

cc: Hon. Eric Johnson, District Judge
Damon Sameri Chaney
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk