

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD DEAN LEVENTRY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86315-COA

FILED

AUG 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harold Dean Leventry, Jr., appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Leventry filed his petition on January 27, 2023, more than two years after issuance of the remittitur on direct appeal on August 18, 2020. *See Leventry v. State*, No. 79318-COA, 2020 WL 4284330 (Nev. Ct. App. July 24, 2020) (Order of Affirmance). Thus, Leventry's petition was untimely filed. *See* NRS 34.726(1). Leventry's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Leventry claimed that legislative changes to NRS 453.3385 provided him with good cause. Leventry filed his petition more than two years after the July 1, 2020, effective date of the changes. *See* 2019 Nev. Stat., ch. 633, § 137, at 4488. Leventry's claim was reasonably available to be raised in a timely petition, and he did not demonstrate an impediment external to the defense prevented him from doing so. Therefore, we conclude the district court did not err by denying this good-cause claim. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Leventry argues on appeal that the State did not serve him with its motion to dismiss his petition. A certificate of mailing contained in the record states that Leventry was served by mail with the State's motion, and Leventry does not allege errors related to that certificate. As a separate and independent ground to deny relief, Leventry fails to allege what he would have argued in a response to the State's motion and thus fails to demonstrate that his substantial rights were affected. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we conclude Leventry is not entitled to relief based on this claim. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Harold Dean Leventry, Jr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk