

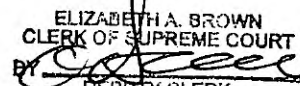
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL LEE DONOHUE,
Appellant,
vs.
KYLE OLSEN (NOW FERNANDIES
FRAZIER), WARDEN OF NORTHERN
NEVADA CORRECTIONAL CENTER,
Respondent.

No. 85587-COA

FILED

OCT 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Lee Donohue appeals from an order of the district court granting a motion to dismiss a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

Donohue argues the district court erred by granting the State's motion to dismiss his petition without first conducting an evidentiary hearing. Donohue filed his petition on June 30, 2022, more than four years after entry of the judgment of conviction on October 16, 2017, and the amended judgment of conviction on October 24, 2017.¹ Thus, Donohue's petition was untimely filed. *See* NRS 34.726(1). Donohue's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* To warrant an evidentiary hearing, a petitioner's good-cause claims must be supported by specific factual allegations that are not belied by the record and, if true, would entitle the

¹No direct appeal was taken from either judgment of conviction.

petitioner to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

First, Donohue claimed he had good cause for the delay because he was not personally served with the amended judgment of conviction and he has been in custody on this case since October 15, 2015. Donohue failed to allege facts that, if true, demonstrate an impediment external to the defense prevented him from timely filing his petition. Donohue's counsel was served with a copy of the amended judgment of conviction, and Donohue did not explain how his custody status affected his ability to file a timely petition. Therefore, we conclude the district court did not err by rejecting these good-cause claims without conducting an evidentiary hearing. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Second, Donohue claimed he had good cause for the delay because he "was procedurally barred pursuant to the then interpretation of NRS 34.810(1)(a)." Reading Donohue's petition as a whole, Donohue appeared to contend he had good cause because he could not raise his claims of ineffective assistance of counsel at sentencing and on direct appeal until the Nevada Supreme Court issued its decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021).

Gonzales did not announce a new rule of law; rather, the supreme court merely clarified that NRS 34.810(1)(a) never precluded claims that counsel rendered ineffective assistance at sentencing. *See Gonzales*, 137 Nev. at 403, 492 P.3d at 562 ("In sum, we explicitly hold today what has been implicit in our caselaw for decades."). As such, Donohue's claims were available to be raised prior to the supreme court's decision in *Gonzales*. *See Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) ("A judicial construction of a statute is an authoritative statement of what the

statute meant before as well as after the decision of the case giving rise to that construction.”); *see also Nika v. State*, 124 Nev. 1272, 1286, 198 P.3d 839, 849 (2008) (discussing when a “state court interpretation of a state criminal statute constitutes a change in—rather than a clarification of—the law”). Thus, Donohue failed to allege facts that, if true, would demonstrate he was entitled to relief on this good-cause claim. Therefore, we conclude the district court did not err by rejecting this good-cause claim without conducting an evidentiary hearing.

For the foregoing reasons, we conclude the district court did not err by dismissing Donohue’s petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mason E. Simons, District Judge
Ben Gaumond Law Firm, PLLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk