


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN PATRICK WIRKKALA,
Appellant,
vs.
WARDEN, JOHN HENLEY,
Respondent.

No. 89691-COA

FILED

JUN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Patrick Wirkkala appeals a district court order denying three identical postconviction petitions for a writ of habeas corpus filed on September 18, 2024. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Wirkkala filed his petitions four years after entry of his judgments of conviction on May 13, 2020. Thus, Wirkkala's petitions were untimely filed. *See* NRS 34.726(1). Wirkkala's petitions were procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* “In order to 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).

Wirkkala's petitions challenged the Division of Parole and Probation's (Division) failure to file a petition for early discharge from probation pursuant to NRS 176A.840 in each of Wirkkala's three criminal cases. Wirkkala asserted that because he completed court ordered treatment; paid all required fines, fees, and restitution; and did not have a violation within his first year, the Division was compelled to seek early

discharge. Wirkkala asserts, both below and on appeal, that the orders revoking probation and imposing the underlying sentences provide good cause to excuse the untimely petition. Wirkkala also points to alleged new evidence showing he completed the required treatment program and asserts that this record would have altered the outcome of a prior mandamus petition he filed seeking to compel the Division to petition for early discharge.

The entry of an amended judgment of conviction can provide good cause to excuse the procedural bars, *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004), but Wirkkala does not challenge the probation revocation or the imposition of the underlying sentences. Instead, Wirkkala's challenge is that the Division was obligated to move for early discharge from probation and failed to do so. Thus, entry of the revocation orders does not provide good cause for Wirkkala's instant petitions. Further, claims attendant to the Division's purported failure to act could have been raised, according to Wirkkala's petitions, between August 2021 and March 2022, when Wirkkala contends the Division was required to act and petition for early discharge from probation. See NRS 34.160 ("A writ of mandamus may issue to compel an official to perform a legally required act."); *Solander v. Nev. Dep't of Corr.*, No. 86614, 2023 WL 4553923 (Nev. 2023) (granting mandamus to order the Division to move for early discharge from parole). Wirkkala attempted similar challenges when he moved the district court for early discharge over one year before he filed the instant petitions and pursued mandamus relief seven months before filing the instant petitions. Therefore, the district court did not err in concluding the entry of the probation revocation orders did not constitute good cause to excuse the untimely petitions.

Wirkkala also asserts the instant petitions rely on new evidence that would call representations made in the response to his 2024 mandamus petition into question, but Wirkkala did not allege that he could not have obtained this evidence (related to the successful completion of a substance abuse program in 2021) sooner. Therefore, he failed to allege sufficient facts to explain the entire length of the delay in filing the instant petition. See *Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Additionally, neither the documents submitted with the instant petitions nor those included in the record pertain to the petition for mandamus relief. Thus, this court has no way of evaluating the impact of the new evidence and whether it amounts to good cause. Accordingly, the district court did not err in concluding that Wirkkala failed to demonstrate good cause to excuse the untimely petitions.


Aside from being untimely, Wirkkala's petition was subject to another procedural bar. Pursuant to NRS 34.810(1)(a), the district court must dismiss a petition challenging the judgment of conviction or sentence if the conviction was based on a guilty plea and the petitioner does not challenge the validity of the guilty plea or the assistance of counsel. Wirkkala's convictions were based on guilty pleas. The petitions below do not allege that his pleas were not knowing or voluntary or that his counsel was ineffective. Accordingly, the district court did not err in denying the petitions as procedurally barred.

Wirkkala also argues the district court erred in not appointing counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent. Even though the district court granted Wirkkala's request to proceed in forma pauperis, the record on appeal does not indicate that he filed a motion requesting the appointment of postconviction counsel pursuant to NRS 34.750. Thus,

considering Wirkkala's failure to request counsel and that his petition was procedurally barred, the district court did not err in not appointing counsel.

Having considered Wirkkala's contentions and concluded they lack merit, we¹

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Thomas L. Stockard, District Judge
Jonathan Patrick Wirkkala
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

¹To the extent Wirkkala asserts an actual innocence claim in his informal brief, we decline to consider it for the first time on appeal. *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).