


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE GATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89869-COA

FILED

JUN 30 2025

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rene Gato appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 4, 2024. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Gato filed his petition more than 17 years after issuance of the remittitur on direct appeal on June 26, 2007. *See Gato v. State*, Docket No. 45166 (Order of Affirmance, May 30, 2007). Thus, Gato's petition was untimely filed. *See* NRS 34.726(1). Gato's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—*see id.*, or a showing he is actually innocent such that “the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice,” *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, Gato was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Gato claimed he had good cause to excuse the procedural time bar because an impediment external to the defense existed. To

establish 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). “An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.” *Id.* (internal quotation marks omitted).

Gato argued an impediment external to the defense existed because the murder weapon was never presented to the jury. Gato failed to explain how this was an impediment external to the defense. Further, this fact has been known since the trial occurred, and Gato failed to demonstrate why claims related to the murder weapon could not have been raised earlier. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available). Therefore, we conclude the district court did not err by denying this good-cause claim.

Second, Gato claimed that he had good cause to excuse the procedural time bar because his first postconviction counsel was ineffective for failing to file a timely postconviction habeas petition. Gato has not shown good cause to excuse the procedural time bar because he was not entitled to the appointment of counsel in the prior postconviction proceedings. *See Brown v. McDonald*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (“We have consistently held that the ineffective assistance of post-conviction counsel in a noncapital case may not constitute ‘good cause’ to excuse procedural defaults.”); *see also McKague v. Warden*, 112 Nev. 159,

164-65, 912 P.2d 255, 258 (1996). Therefore, we conclude the district court did not err by denying this good-cause claim.


Finally, Gato claimed he is actually innocent. To support his contention, he argued that no murder weapon was presented to the jury. Gato did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12. We therefore conclude the district court did not err by denying Gato’s petition as procedurally time barred. Further, Gato failed to overcome the presumption of prejudice to the State, see NRS 34.800, and we conclude the district court did not err by dismissing the petition as barred by laches.


On appeal, Gato argues the district court erred by denying his petition without first appointing 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. See *id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). The district court found that Gato’s petition was procedurally time barred, that the issues presented were not difficult, that Gato was able to comprehend the proceedings, and that discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of

the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Rene Gato
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk