

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCELL WILLIAMS,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 70141

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *J. Mical*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting the State's motion to dismiss a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Marcell Williams claims the district court erred by dismissing his petition because it failed to consider the fact he was incarcerated in the Sacramento County Jail for eight months without access to his property and legal papers or an adequate law library and appropriate habeas petition forms. Williams further asserts an evidentiary hearing should have been held to determine just how much he was prejudiced and a hearing should have been held on his request for postconviction counsel.

Williams' August 27, 2015, petition was procedurally barred because it was filed more than a year after the entry of the judgment of

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

conviction on May 15, 2014.² *See* NRS 34.726(1). Consequently, Williams' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Williams denied his petition was filed more than one year after the judgment of conviction and made no attempt to show good cause and undue prejudice on the face of the petition. The State subsequently filed a motion to dismiss the petition on grounds it was untimely and Williams had failed to assert any justification for its untimeliness. Thereafter, Williams responded with a motion for leave to file a statement demonstrating cause and prejudice.

The district court made the following findings in its order denying Williams' motion for leave to file a statement demonstrating cause and prejudice and granting the State's motion to dismiss the petition for a writ of habeas corpus: Williams' petition was untimely filed. Williams' claim that he had inadequate access to Nevada law while serving a jail sentence in Sacramento, California, does not constitute good cause. Williams had five weeks upon returning to Nevada to file a timely petition. And nothing in Williams' petition explains why he could not have filed some form of petition within the required time period.

The district court's findings are supported by the record on appeal and we conclude it did not err by denying Williams' motion for leave to file a statement demonstrating cause and prejudice³ or by

²Williams' direct appeal was dismissed for lack of jurisdiction because the notice of appeal was not timely filed. *Williams v. State*, Docket No. 65153 (Order Dismissing Appeal, September 30, 2014).

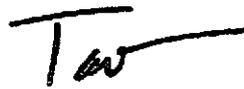
³Although the district court denied Williams' motion for leave to file a statement demonstrating cause and prejudice, it appears to have
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summarily dismissing his habeas petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750(1), (4); NRS 34.770(2); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1075 (2005) (holding a petitioner “must plead and prove specific facts that demonstrate good cause” to overcome a procedural bar). Accordingly, we

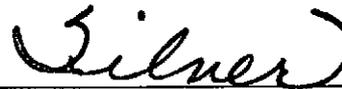
ORDER the judgment of the district court AFFIRMED.



Gibbons C.J.



Tao J.



Silver J.

cc: Hon. Patrick Flanagan, District Judge
Marcell Williams
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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considered the good cause claim Williams raised in his reply to the State’s opposition to his motion for appointment of counsel that was filed on October 6, 2015, which was substantially similar to the good cause claim he raised in his motion for leave to file a statement.