IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS MARTINEZ, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 75760

RESPONDENT'S ANSWERING BRIEF

Appeal From Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County

BETSY ALLEN, ESQ.
Nevada Bar #006878
Law Office of Betsy Allen
PO Box 46991
Las Vegas, Nevada 89114
(702) 386-9700

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

Other Authorities

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS MARTINEZ, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 75760

RESPONDENT'S ANSWERING BRIEF

Appeal from Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County

STATEMENT OF THE ISSUE(S)

1. Whether the district court correctly found that Appellant's Petition for Writ of Habeas Corpus is procedurally barred, without good cause to overcome the procedural bars.

2. Whether this Court wants to reverse its decision rejecting the federal doctrine of equitable tolling of otherwise procedurally barred post-conviction Petitions for Writ of Habeas Corpus, despite statutory law, NRS 34, contrary to this doctrine.

STATEMENT OF THE CASE

A. Trial Court Proceedings and Direct Appeal

On September 29, 2006, Appellant Fredys Martinez was charged by way of Grand Jury Indictment with: Count 1 – Burglary While in Possession of a Deadly

Weapon (Felony – NRS 205.060); Count 2 – Battery with use of a Deadly Weapon (Felony – NRS 200.481); Count 3 – First Degree Kidnapping with use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); and Count 4 – Sexual Assault with use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165). Appellant's Appendix ("AA") at 001-003.

Appellant's jury trial began on April 11, 2007. On April 12, 2007, the jury found Appellant guilty of: Count 1 – Burglary while in Possession of a Weapon; Count 2 – Battery with use of a Deadly Weapon; and Count 3 – First Degree Kidnapping with use of a Deadly Weapon. AA 004-005. The jury found Appellant not guilty of Count 4. AA 004-005. Appellant was present in court with counsel on May 24, 2007, adjudicated and sentenced to the Nevada Department of Corrections as follows: Count 1 – 60 to 180 months; Count 2 – 48 to 120 months, to run concurrently with Count 1; and Count 3 – 60 months to life, plus a consecutive term of 60 months to life for the use of a deadly weapon, the entire sentence to run concurrently to Counts 1 and 2. Appellant was given 281 days credit for time served. AA 004-005.

The Judgment of Conviction was filed on May 31, 2007. AA 004-005. The Nevada Supreme Court affirmed Appellant's conviction after a timely appeal on May 7, 2008. AA 006-012. Remittitur issued on June 3, 2008.[1]

Appellant filed a Motion to Vacate his Judgment of Conviction on April 21, 2010. The Court denied Appellant's Motion without requiring a response from the State on May 5, 2010. The Court noted that Appellant should have filed a Petition for Writ of Habeas Corpus but it would be time barred as Remittitur issued in 2008.

B. Appellant's First Petition for Writ of Habeas Corpus

Ultimately, Appellant filed his first Petition for Writ of Habeas Corpus just short of two years after this Court issued the remittitur from his direct appeal, on April 30, 2010. AA 044-050. The district court found that Appellant had not set forth good cause sufficient to overcome the procedural bars contained in NRS 34 and

[1] Appellants have the "responsibility to provide the materials necessary for this court's review." Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975); see also Fields v. State, 125 Nev. 785, 220 P.3d 709 (2009) (appellant's burden to provide complete record on appeal); Thomas v. State, 120 Nev. 37, 43 & n. 4, 83 P.3d 818, 822 & n. 4 (2004); NRAP 30(d). In addition, when evidence upon which the lower court's judgment rests is not included in the record, it is assumed that the record supports the district court's decision." M&R Investment Company, Inc. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987). Here, despite challenging the district court's denial of his Second Petition for Writ of Habeas Corpus on procedural grounds, it is not apparent to the State that Appellant included the Remittitur from direct appeal in the appendix—a document critical for this Court's consideration of this matter. Nonetheless, the State reviewed the docket of Supreme Court No. 49608, Appellant's direct appeal of his Judgment of Conviction, and references this Court's docket, which this Court can take judicial notice of in this case.

denied Appellant's First Petition on July 14, 2010. AA 056-061. This Court affirmed the district court's denial of his Petition for Writ of Habeas Corpus on July 13, 2011. AA 063-064. Appellant argued that that he had good cause to overcome the procedural bars because appellate counsel failed to inform him of the resolution of the direct appeal, [and] because [A]ppellant could not read or write English. AA 063-064. This Court rejected this argument and found that Appellant failed to demonstrate that an impediment external to the defense excused his delay pursuant to Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). AA 063-064.

C. Appellant's Second Petition for Habeas Corpus (Federal Court)

Appellant, with the assistance of appointed counsel, filed his Second Petition for Writ of Habeas Corpus in federal court. AA 421-436. U.S. District Court and the Ninth Circuit Court of Appeals both found that Appellant failed to file his Second Petition in a timely matter and did not demonstrate circumstances sufficient to demonstrate that he should receive the benefit of federal equitable tolling and dismissed his Second Petition. AA 135-137.

D. Appellant's Third Petition for Writ of Habeas Corpus

After being appointed counsel by the district court, AA 167, Appellant filed a Supplement to a pro-per Third Petition for Writ of Habeas Corpus on December 29,

2017.[2] The State opposed the Third Petition on February 12, 2018.[3] On May 18, 2018, after hearing, the district court denied the Third Petition.[4]

SUMMARY OF THE ARGUMENT

This Court has steadfastly enforced procedural bars applicable to post-conviction Petitions for Writ of Habeas Corpus; it should here, too. Furthermore, this Court has previously rejected the at least some of the reasons advanced as good cause by Appellant here in Appellant's First Petition for Writ of Habeas Corpus—this Court should continue to do so. Finally, Appellant essentially asks this Court to reverse its decision in Brown v. McDaniel, where this Court rejected the federal doctrine of equitable tolling of post-conviction Petitions for Writ of Habeas Corpus, so that his Third Petition can be heard on the merits. 130 Nev. Adv. Rep. 60, 331 P.3d 867, 872 (2014). This Court should not.

ARGUMENT

I. APPELLANT'S PETITION IS PROCEDURALLY BARRED

A. Appellant's Petition Is Time-Barred and Successive

Appellant's Petition is time-barred. The mandatory provision of NRS 34.726(1) states:

---

[2] Once again, it appears to the State that Appellant has not provided this Court the documents necessary for this Court's consideration of his appeal. See, supra, at n.1.
[3] Id.
[4] Id.

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence ***must be filed*** within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, ***within 1 year after the Supreme Court issues its remittitur***. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

(emphasis added). "[T]he statutory rules regarding procedural defaults are mandatory and cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

The one-year time bar prescribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its plain meaning).

In Gonzales v. State, this Court rejected a habeas petition that was filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). 118 Nev. 590, 593, 590 P.3d 901, 902 (2002). Gonzales reiterated the importance of filing the petition with the District Court within the one-year mandate, absent a showing of "good cause" for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed. In

contrast with the short amount of time to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 595, 53 P.3d at 903.

Here, there was a timely direct appeal. The remittitur was issued on June 3, 2008. Appellant filed the instant Third Petition on December 29, 2017, more than *nine* years after the remittitur issued. Accordingly, this Post-Conviction Petition for Writ of Habeas Corpus is time-barred, absent a showing of good cause. NRS 34.762(1).

B. Appellant's Petition Is Successive

Further, Appellant's Petition is procedurally barred because it is successive. NRS 34.810(2) reads:

> A second or successive petition ***must*** be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(emphasis added). Second or successive petitions will only be decided on the merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

This Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse

post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Here, Appellant filed his first post-conviction Petition for Writ of Habeas Corpus on April 30, 2010. The District Court denied the Petition as time-barred because Appellant failed to present good cause to overcome the procedural bars. Appellant filed a Notice of Appeal on March 25, 2011. The Nevada Supreme Court affirmed the District Court's decision and Remittitur issued on August 10, 2011. Therefore, this Petition is successive—either a second or third petition if the Court considers Appellant's federal petition in consideration of this issue—an abuse of the writ, and must be dismissed.

C. The State Affirmatively Pleads Laches

NRS 34.800 creates a rebuttable presumption of prejudice to the State if there is "[a] period exceeding five years between . . . a decision on direct appeal of a

judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction." The statute also requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The State plead laches, below, in the instant case.

Here, remittitur on direct appeal issued on June 3, 2008. Appellant filed the instant Petition on December 29, 2017. Since over 9 years have elapsed between the remittitur and the filing of the instant Petition, NRS 34.800 directly applies. Appellant in his Petition has provided nothing to overcome this presumption of prejudice to the State given the excessive delay in the filing of this Petition, and dismissal is warranted.

D. Application of the Procedural Bars is Mandatory

This Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," and "cannot be ignored when properly raised by the State." 121 Nev. at 231-33, 112 P.3d at 1074-75. There, the Riker Court reversed the district court's decision not to bar the Appellant's untimely and successive petition:

> Given the untimely and successive nature of [Appellant's] petition, the district court had a duty imposed by law to consider whether any or all of [Appellant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to

> make this determination here constituted an arbitrary and unreasonable exercise of discretion.

Id. at 234, 112 P.3d at 1076. The Riker Court justified this holding by noting that "[t]he necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

In State v. Greene, this Court reaffirmed its prior holdings that the procedural default rules are mandatory when it reversed the district court's grant of a post-conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. ___, ___, 307 P.3d 322, 326 (2013). There, the Court ruled that the Appellant's petition was untimely and successive, and that the Appellant failed to show good cause and actual prejudice. Id. Accordingly, the Court reversed the district court and ordered the Appellant's petition dismissed pursuant to the procedural bars. Id. at ___, 307 P.3d at 327.

II. APPELLANT HAS NOT SHOWN GOOD CAUSE TO OVERCOME THE MANDATORY PROCEDURAL BARS

Appellant's Petition for Writ of Habeas Corpus is time-barred with no good cause shown for delay. Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be

> filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

This Court has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), this Court rejected a habeas petition that was filed two days late despite evidence presented by the Appellant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, this Court has held that the district court has a *duty* to consider whether a Appellant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074

(2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. This Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

Here, remittitur issued on June 3, 2008. Thus, the one-year time bar began to run from this date. The instant Petition was not filed until December 29, 2017. This is more than *nine* years after the remittitur was issued and in excess of the one-year time frame. Absent a showing of good cause for this delay and undue prejudice, Appellant's claim must be dismissed because of his tardy filing.

A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants ***must*** show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "appellants cannot

attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. In order to establish prejudice, the Appellant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

A. Equitable Tolling

Appellant argues that his Petition should not have been time-barred because of equitable tolling, citing to NRS 34.726. Appellant then cites numerous federal cases discussing equitable tolling. AOB at 14-17. However, Nevada does not recognize equitable tolling like federal courts, as Appellant acknowledges. AOB at 18. Appellant also does not cite a single Nevada case to support his contention that equitable tolling applies. Id. Thus, Appellant is not entitled to equitable tolling, as there is no binding authority to support his argument.

In fact, this Court has rejected the federal equitable tolling standard. Brown v. McDaniel, 130 Nev. Adv. Rep. 60, 331 P.3d 867, 872 (2014). This Court stated:

> ***We decline Brown's invitation to adopt an equitable exception to the general rule*** in Nevada that the ineffective assistance of post-conviction counsel does not establish cause for a habeas petitioner's procedural default of an ineffective-assistance-of-trial-counsel claim unless the appointment of post-conviction counsel was mandated by statute.

Id. (emphasis added). This Court further explained:

> While we have looked to the Supreme Court for guidance, we have not followed Supreme Court decisions when they are inconsistent with state law. For example, we have rejected the prison mailbox rule to allow for tolling of the one-year period for state post-conviction habeas petitions, despite the application of it by federal habeas courts. *See Gonzales v. State*, 118 Nev. 590, 594-95, 53 P.3d 901, 903-04 (2002). ***We have also rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute's plain language requires a petitioner to demonstrate a legal excuse for any delay in filing a petition.*** *See Hathaway*, 119 Nev. at 252, 254 n.13, 71 P.3d at 506, 507 n.13. We are not bound by Supreme Court decisions in our interpretation of the "cause" exceptions under NRS 34.726 and 34.810, and because the Martinez, 566 U.S. 1 (2012) rule does not fit within our State's statutory post-conviction framework, we decline to extend it to state post-conviction proceedings.

Brown, 130 Nev. Adv. Rep. 60, 331 P.3d at 872.

Thus, equitable tolling does not apply. Appellant can only overcome the mandatory procedural bars through a showing of good cause. Appellant provides "extraordinary circumstances" in support of his equitable tolling argument; however, the State will address those as good cause arguments as that is the controlling legal authority in Nevada and equitable tolling does not apply. NRS 34.726.

Appellant argues that he exercised reasonable diligence in pursuing his rights. AOB 26. But as Appellant notes, AOB at 15, this argument only applies when

considering the federal doctrine of equitable tolling. See Holland v. Florida, 560 U.S. 531, 130 S.Ct. 2549 (2010). Thus, it has no application here under Nevada law.

B. Language Difficulties

Appellant argues that he was unable to speak, read, or write English in attempting to advance good cause to overcome procedural bars, which he alleges caused the nine-year delay in his filing of the Petition. AOB at 19. Appellant again cites to federal cases to support this claim and fails to provide any binding authority, whatsoever. AOB at 19-20. These claims are not external to Appellant, they are internal to him, and therefore does not constitute an external impediment to the defense sufficient to show good cause under NRS 34. Appellant had a year to timely file his Petition and has not had difficulty filing other motions, based on the numerous other post-conviction motions that have been filed by Appellant. See AOB at 2, 8-9.

But this Court already rejected this argument when it considered his First Petition for Writ of Habeas Corpus. Appellant argued that that he had good cause to overcome the procedural bars because [A]ppellant could not read or write English. AA 063-064. This Court rejected this argument and found that Appellant failed to demonstrate that an impediment external to the defense excused his delay pursuant to Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). AA 063-064. In Gonzales, 118 Nev. at 596, 53 P.3d at 904, this Court rejected a habeas petition

that was filed two days late despite evidence presented by the Appellant that he purchased postage through the prison and mailed the Notice within the one-year time limit. Thus, the fact that Appellant does not speak English, does not establish good cause for filing a Petition 9 years late. And as Appellant notes: the federal court system considered this same argument and rejected any equitable tolling to overcome procedural bars based upon these arguments. AOB 5-7.

C. Appellate Case File

Next, Appellant argues that he could not obtain a copy of his appellate case file, which cause him delay in filing his Petition. AOB at 23. Yet again, Appellant cites to federal cases to support this claim and fails to provide any binding authority. AOB at 23-26. This claim is also insufficient to establish good cause, under NRS 34.726. Because Appellant was unable to obtain his appellate case file is no excuse to file a Petition over *9 years late*. Appellant appears to have no trouble filing motions and appealing the denial of these motions. Appellant had many options available to him to determine the status of his case and had numerous opportunities to bring this up in prior proceedings. Furthermore, when this Court considered Appellant's first Petition for Writ of Habeas Corpus, this Court rejected this same argument. Appellant argued that that he had good cause to overcome the procedural bars because appellate counsel failed to inform him of the resolution of the direct appeal. AA 063-064. This Court rejected this argument and found that Appellant

failed to demonstrate that an impediment external to the defense excused his delay pursuant to Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). AA 063-064.

Appellant cannot now attempt to manufacture good cause to overcome the procedural bar. Clem, 119 Nev. at 621, 81 P.3d at 526. This Court rejected a petition that was a mere two days late despite evidence that postage was purchased and the notice was mailed prior to the deadline. Gonzales, 118 Nev. at 596, 53 P.3d at 904. Appellant cannot establish good cause for being over 9 years late because none of his "extraordinary circumstances" has demonstrated a legal excuse for any delay in filing his petition, let alone a 9 year delay. See, Hathaway,119 Nev. at 252, 254 n.13, 71 P.3d at 506, 507 n.13.

D. Prison Law Library

Finally, Appellant argues that his lack of meaningful access to the prison law library constitutes good cause to overcome the procedural bars. AOB at 21. This argument, too, must fail as a matter of law. This Court has held that mental problems and the lack of legal experience of a Appellant or prison law clerks do not constitute an impediment external to the defense and therefore does not constitute good cause to overcome the procedural bars. Phelps v. Director, Nevada Department of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

The Nevada Supreme Court has rejected this argument before, in other cases. E.g. Herrera v. State, 126 Nev. 699, 367 P.3d 778 (2010) (unpublished) (finding no good cause where appellant claimed he did not have access to the law library because of his inadequate English, and believed that the prison law clerk who helped him…was admitted to practice law).

Furthermore, although Appellant cites all manner of federal law for the proposition that states must guarantee access to law libraries, AOB at 21, the cases cited do not establish a constitutional right to access to a law library. In Lewis v. Casey, the Supreme Court emphasized, *inter alia*, that the Constitution does not guarantee inmates a right of access to a prison law library or to legal assistance as such, but instead guarantees a right of access to the courts. 518 U.S. at 350, 116 S.Ct. at 2179. As the high court stated, "[i]n other words, prison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.'" 518 U.S. at 351, 116 S.Ct. at 2180 (quoting Bounds v. Smith, 430 U.S. at 825, 97 S.Ct. at 1496). The Constitution "guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." 518 U.S. at 356, 116 S.Ct. at 2182.

As previously discussed, Appellant has filed many motions in State and federal court. As such, Appellant simply cannot demonstrate an external impediment to the defense. The facts of this case, as argued by Appellant, show that he received responses from the prison law library. AOB at 26. Yet, nowhere in Appellant's timeline does he ask for help filling out a Petition for Writ of Habeas Corpus on his behalf. Thus, the failure to Appellant to file a Petition for Writ of Habeas Corpus is his own—internal—problem and not sufficient to show good cause.

CONCLUSION

For the foregoing reasons, the district court's denial of Appellant's Third Petition should be AFFIRMED.

Dated this 31st day of December, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 4,431 words and 19 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 31st day of December, 2018.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 31st day of December, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

BETSY ALLEN, ESQ.
Counsel for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

/s/ J. Garcia
Employee, Clark County
District Attorney's Office

SSO/Elliot Anderson/jg