

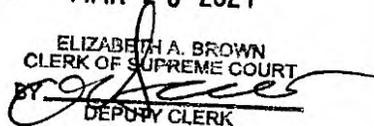
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN RODNEY ORTH,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN AT HIGH  
DESSERT STATE PRISON, NV,  
Respondent.

No. 87007-COA

FILED

MAR 28 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Sean Rodney Orth appeals from an order of the district court dismissing a “first amended postconviction petition for a writ of habeas corpus (post-conviction)” filed on May 2, 2023. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

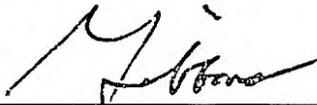
Orth argues that the district court erred by denying his claims that: (1) the Nevada Board of Parole Commissioners (Parole Board) failed to hold a timely revocation hearing after Orth was taken into the custody of the Nevada Department of Corrections for his parole violations; and (2) the Parole Board did not provide him with a new notice of charges and a preliminary inquiry after he pleaded guilty to a new criminal charge.

Orth filed his petition more than one year after his parole was revoked on March 22, 2022. Thus, Orth’s petition was untimely filed. *See* NRS 34.726(1). Orth’s petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Orth did not allege good cause for the untimely filing of his petition on the face of his petition. Therefore, we conclude that Orth’s petition was

procedurally barred, and he is not entitled to relief.<sup>1</sup> See *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (holding that the application of procedural bars are mandatory); *Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (holding that “a petitioner’s explanation of good cause and prejudice for each procedurally barred claim must be made on the face of the petition”).

Orth also argues the district court erred by dismissing his petition without giving him an opportunity to reply to the State’s motion to dismiss. The State filed a motion to dismiss Orth’s petition on June 22, 2023. Orth had 15 days to file a reply, see NRS 34.750(4), but the district court filed its order dismissing Orth’s petition on June 29, 2023, well before the 15 days had passed. Accordingly, we conclude the district court erred by failing to give Orth the opportunity to reply to the State’s motion. However, “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.” NRS 178.598. Orth filed a timely reply, but the reply did not address any procedural bars. Because we conclude that Orth’s petition is procedurally time-barred, we conclude that the district court’s error was harmless. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

<sup>1</sup>Orth claims for the first time on appeal that he filed a petition on March 11, 2023. The record does not support this claim.

cc: Hon. Tierra Danielle Jones, District Judge  
Sean Rodney Orth  
Attorney General/Carson City  
Clark County District Attorney  
Attorney General/Las Vegas  
Eighth District Court Clerk