

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL S. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55701

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus, or alternatively, a petition for a writ of mandamus or request for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Appellant filed his petition on May 23, 2010, almost two years after the judgment of conviction was filed on May 23, 2008.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²No direct appeal was taken.

petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. Id.

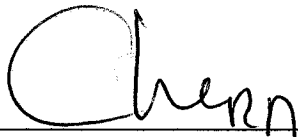
Appellant first argued that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument is without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.³ NRS 34.720(1); NRS 34.724(1).

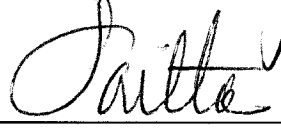
Next, he appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); Schlup v. Delo, 513 U.S. 298, 327 (1995); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112

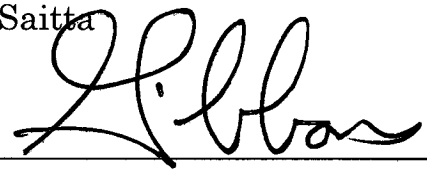
³Appellant's claims did not implicate the jurisdiction of the courts.

Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition,⁴ and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Daniel S. Porter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.