

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENWON MONTGOMERY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56280

FILED

SEP 29 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingersoll*  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on March 23, 2010, more than one year after entry of the judgment of conviction on August 11, 2008.<sup>2</sup> Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

Appellant did not provide a cogent argument that he had cause for the delay. To the extent that he argued that the procedural bars

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<sup>1</sup>This 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).

<sup>2</sup>No direct appeal was taken.

did not apply because he was challenging the constitutionality of the laws, the jurisdiction of the courts, and this court's interpretation of NRS 193.165, appellant's argument was without merit. Appellant's claims challenged the validity of the judgment of conviction, and thus, the procedural bars did apply in this case.<sup>3</sup> See NRS 34.720(1); NRS 34.724(1).

Next, appellant 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 NRS 193.165 had been erroneously interpreted and applied. Appellant did not demonstrate a fundamental miscarriage of justice as his argument fell short of demonstrating actual innocence.<sup>4</sup> 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


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<sup>3</sup>Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.


<sup>4</sup>We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

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

cc: Hon. Jackie Glass, District Judge  
Clark Co. Clerk  
Kenwon Montgomery  
Attorney General/Carson City  
Clark County District Attorney

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<sup>5</sup>We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.