

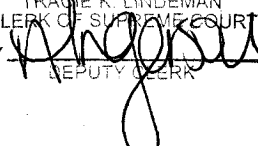
IN THE SUPREME COURT OF THE STATE OF NEVADA

AZUJHON KENNETH SIMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63529

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART AND
DISMISSING APPEAL IN PART*

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus, petition for quo warranto, and a motion to dismiss for lack of subject matter jurisdiction.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In his petition filed on March 26, 2013, appellant claimed that his conviction was invalid due to a jurisdictional defect. Specifically, appellant claimed that the district court lacked jurisdiction to convict him because there was no enacting clause set forth in the Nevada Revised Statutes. Appellant's petition was untimely because it was filed more than eleven years after entry of both the judgment of conviction on July

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).

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10, 2001, and the amended judgment of conviction on August 7, 2001.² *See* NRS 34.726(1). Thus, appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

Appellant did not state any cogent cause for the delay. To the extent that he suggested that the procedural bars did not apply because he was challenging the constitutionality of the laws and the jurisdiction of the courts, he was mistaken. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.³ *See* NRS 34.720(1); NRS 34.724(1). Because appellant did not provide cause for the delay, the petition was procedurally barred. Appellant further failed to overcome the presumption of prejudice to the State. Thus, the district court did not err in denying this portion of the petition.

To the extent that appellant sought a writ of quo warranto, appellant's claims fell outside the scope of claims permissible in quo warrant. *See Lueck v. Teuton*, 125 Nev. 674, 678, 219 P.3d 895, 898 (2009) (recognizing that quo warranto is available to challenge an individual's

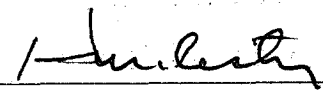
²No direct appeal was taken.

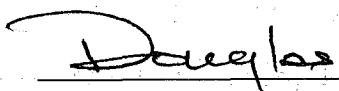
³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010. We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

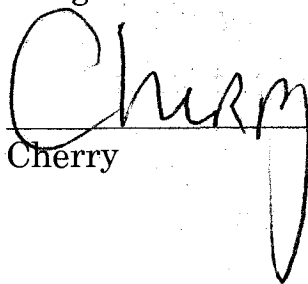
right to hold office and to oust an individual from the office). Thus, the district court did not err in denying this portion of the petition.

Finally, to the extent that appellant sought to dismiss his conviction or the criminal complaint for lack of subject matter jurisdiction, the denial of a motion to dismiss for lack of subject matter jurisdiction is not an appealable decision because no statute or court rule authorizes it. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Thus, we dismiss this portion of the appeal. Accordingly, we

ORDER the judgment of the district court AFFIRMED in part and we DISMISS this appeal in part.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Douglas Smith, District Judge
Azujhon Kenneth Sims
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk