

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES ABRAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66418

FILED

JAN 21 2015

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

*ORDER OF AFFIRMANCE AND LIMITED REMAND TO
CORRECT THE JUDGMENT OF CONVICTION*

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant filed his petition on March 6, 2014, more than one year after entry of the judgment of conviction on August 27, 2012.² Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1).

First, appellant claimed that he had good cause due to mental health issues and because prison doctors did not ask prison law clerks to help him with his legal matters for the duration of his mental health

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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²No direct appeal was taken.

treatment. This claim did not provide good cause to overcome the procedural bar as it failed to demonstrate that there was an impediment external to the defense that prevented appellant from raising his claims in a timely petition. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation, and reliance on the assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).


Second, appellant claimed that the district court lacked jurisdiction to adjudicate him as a habitual criminal and asserted that the procedural bar did not apply to this claim because jurisdiction can be challenged at any time. Appellant's claim lacked merit because his claim did not implicate the jurisdiction of the courts. *See Nev. Const. art. 6, § 6; NRS 171.010.*


Finally, appellant claimed that the procedural bar did not apply because he was actually innocent. Appellant did not provide any facts to support this claim, and therefore, failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini v. v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, the district court did not err in denying the petition as procedurally barred.

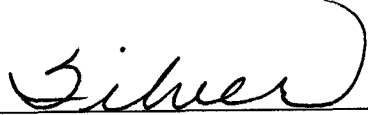
Our review of the judgment of conviction reveals an error. The judgment of conviction contains a clerical error as it fails to reference the applicable portion of the habitual criminal statute under which appellant was sentenced. *See NRS 176.105(1)(c)*. Because the district court has the

authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court to enter a corrected judgment of conviction clarifying that appellant was sentenced as a small habitual criminal pursuant to NRS 207.010(a). Accordingly, we

ORDER the judgment of the district court **AFFIRMED** and direct the district court to **CORRECT** the judgment of conviction as set forth above.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
James Abrams
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk