

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAQUIN ANTONIO GUERRA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67349

**FILED**

JUN 16 2015

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

*ORDER OF AFFIRMANCE*

This is an 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; David B. Barker, Judge.

Appellant Joaquin Antonio Guerra filed his petition<sup>2</sup> on November 13, 2014, almost six years after entry of the judgment of conviction on November 20, 2008.<sup>3</sup> Thus, Guerra's petition was untimely

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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>Guerra filed a motion requesting the district court vacate his judgment of conviction due to ineffective assistance of counsel. Given the nature of the claims raised, the district court properly construed the motion as a post-conviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(b) (explaining that, except for challenges incident to the trial proceedings, a post-conviction petition for a writ of habeas corpus is the exclusive remedy for challenging the validity of a judgment of conviction).

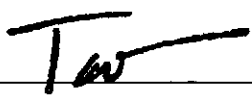
<sup>3</sup>No direct appeal was taken.

filed and procedurally barred absent a demonstration of good cause—  
cause for the delay and undue prejudice. See NRS 34.726(1).

Guerra appeared to assert the U.S. Supreme Court's decision  
in *Padilla v. Kentucky*, 559 U.S. 356 (2010) provided good cause to claim  
he did not receive proper advice regarding the immigration consequences  
stemming from his conviction for sexually motivated coercion. However,  
Guerra did not attempt to explain the four-year delay in raising claims  
that stemmed from the *Padilla* decision, and therefore, he failed to  
demonstrate that an impediment external to the defense should excuse the  
procedural time bar. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d  
503, 506 (2003). In addition, the U.S. Supreme Court has held that  
*Padilla* does not apply retroactively, *Chaidez v. United States*, 568 U.S.  
\_\_\_, \_\_\_, 133 S. Ct. 1103, 1113 (2013), and therefore, application of *Padilla*  
does not provide relief to Guerra. We conclude the district court did not  
err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. David B. Barker, District Judge  
Joaquin Antonio Guerra  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk