

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD O'DELL TOWNE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67579

FILED

AUG 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a “motion for amended judgment of conviction to include jail time credits.”¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In his January 21, 2015, motion, appellant Donald Towne, Jr., claimed he was entitled to additional presentence credits. A claim for presentence credits must be raised in a post-conviction petition for a writ of habeas corpus filed in compliance with the procedural requirements of NRS Chapter 34 and therefore, the district court properly construed the motion as a post-conviction petition. See NRS 34.724(2)(b); *Griffin v. State*, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006).

Towne filed the petition more than twenty years after entry of the judgment of conviction on April 13, 1994.² Thus, Towne’s petition was


¹This 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

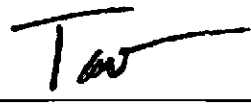
²No direct appeal was taken.

15-900856

untimely filed. See NRS 34.726(1). Moreover, Towne's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous post-conviction petition for a writ of habeas corpus.³ See NRS 34.810(2). Towne's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Towne did not attempt to demonstrate good cause. Therefore, 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. Elissa F. Cadish, District Judge
Donald O'Dell Towne, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³*Towne v. State*, Docket No. 27617 (Order Dismissing Appeal, March 2, 2000).