

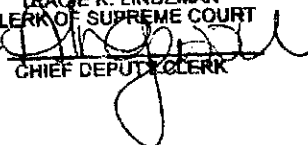
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK VONSEYDEWITZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69513

**FILED**

JUN 22 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a “motion for withdrawal of guilty plea or in the alternative petition for a writ of habeas corpus.”<sup>1</sup> Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

In his motion filed on October 9, 2015, appellant Frederick Vonseydewitz challenged the validity of his judgment of conviction. Due to the nature of the claims raised, the district court properly construed the motion as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. \_\_\_, \_\_\_, 329 P.3d 619, 628 (2014) (holding motions to withdraw a guilty plea should be construed as post-conviction petitions for writs of habeas corpus because a postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing); *see also* NRS 34.724(2)(b) (stating a postconviction

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction).

Vonseydewitz filed his petition more than five years after entry of the judgment of conviction on June 16, 2010.<sup>2</sup> Thus, Vonseydewitz's petition was untimely filed. See NRS 34.726(1). Moreover, Vonseydewitz's petition was successive because he had previously filed postconviction petitions for a writ of habeas corpus and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>3</sup> See NRS 34.810(2). Vonseydewitz's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Vonseydewitz was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Vonseydewitz argues the district court erred by denying the petition as procedurally barred because he raised a contract dispute involving his plea agreement. Vonseydewitz asserts contract disputes are not subject to the postconviction procedural bars. "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Vonseydewitz's challenge to the validity of the guilty plea agreement is a challenge to his judgment of conviction, and accordingly, is subject to the procedural default rules of NRS chapter

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<sup>2</sup>Vonseydewitz did not pursue a direct appeal.


<sup>3</sup>*Vonseydewitz v. State*, Docket No. 67735 (Order of Affirmance, August 4, 2015); *Vonseydewitz v. State*, Docket No. 60213 (Order of Affirmance, November 14, 2012).

34. See NRS 34.724(2)(b). Vonseydewitz did not establish good cause to overcome the procedural bars. Moreover, Vonseydewitz did not overcome the presumption of prejudice to the State. Accordingly, the district court properly applied the procedural bars and denied Vonseydewitz's petition.

Next, Vonseydewitz argues the district court erred by denying his petition without allowing him to reply to the State's opposition to his petition. This claim lacks merit. The State filed its request to dismiss Vonseydewitz's petition due to application of the procedural bars on October 29, 2015. Pursuant to NRS 34.750(4), Vonseydewitz had 15 days after service of the State's request with which to file his response, yet he did not do so. The district court then issued an oral ruling denying the petition on December 1, 2015, well after Vonseydewitz's time for filing a response had passed. Accordingly, the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Frederick Vonseydewitz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk