

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS DESHUN BUCHANAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70578

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Marcus Deshun Buchanan appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus, a petition for a writ of extraordinary relief, and a motion to appoint counsel.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Buchanan filed his postconviction petition for a writ of habeas corpus on March 17, 2016, more than nine years after entry of the judgment of conviction on October 10, 2006.² Thus, Buchanan's petition was untimely filed. *See* NRS 34.726(1). Buchanan's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Moreover, because the State specifically pleaded laches, Buchanan was required to overcome the rebuttable presumption of prejudice. *See* NRS 34.800(2).

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²Buchanan did not pursue a direct appeal.

Buchanan claimed the procedural bars did not apply to his petition because he challenged the jurisdiction of the district court. He asserted he recently learned the Nevada Revised Statutes do not meet constitutional mandates and are invalid because they do not have an enactment clause, justices of the Nevada Supreme Court unconstitutionally participated in the Statute Revision Commission, they violate separation of powers principles, and there is no evidence the laws were introduced in triplicate. These issues did not demonstrate cause to excuse Buchanan's delay.


These claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Buchanan's petition. See Nev. Const. art. 6, § 6; NRS 171.010. Further, these claims were reasonably available to be raised in a timely petition and Buchanan did not demonstrate an impediment external to the defense prevented him from doing so. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Finally, Buchanan did not overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). Therefore, the district court properly denied the petition as procedurally barred.³

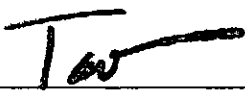
³We note the district court also concluded the postconviction petition was procedurally barred pursuant to NRS 34.810(2). The district court found Buchanan had previously filed a postconviction petition and concluded Buchanan could have raised his current challenge to his judgment of conviction in that petition. However, the prior petition was a challenge to the computation of time served and Buchanan could not have properly raised a challenge to his judgment of conviction in that petition. See NRS 34.738(3). Because Buchanan could not have properly raised his current claims in the prior petition, the district court erred in concluding NRS 34.810(2) barred consideration of this petition. Nevertheless, as the

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In his petition for a writ of extraordinary relief filed on March 23, 2016, Buchanan challenged his judgment of conviction, and requested the district court to expunge his conviction and order his immediate release from prison. The district court construed Buchanan's petition to be a petition for a writ of mandamus and denied the petition. We conclude the district court properly denied the petition because Buchanan improperly challenged the validity of a judgment of conviction through a petition for a writ of mandamus. See NRS 34.160; NRS 34.724(2) (stating a postconviction petition for a writ of habeas corpus is the proper vehicle with which to challenge a judgment of conviction); *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (discussing the scope of mandamus). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

... continued

district court properly denied the petition, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

⁴We also conclude the district court did not abuse its discretion in denying Buchanan's motion to appoint postconviction counsel given the lack of complexity for this matter. See NRS 34.750(1).

cc: Hon. William D. Kephart, District Judge
Marcus Deshun Buchanan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk