

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IVAN RICHARD SANDERSON,
Appellant,
vs.
BRIAN WILLIAMS, SR., WARDEN;
AND THE STATE OF NEVADA,
Respondents.

No. 70980

FILED

MAY 17 2017

ELIZABETH A. BROWN
CLERK OF THE COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ivan Richard Sanderson appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus and a petition for an extraordinary writ.¹ Tenth Judicial District Court, Churchill County; Robert E. Estes, Judge.

Sanderson filed his petition on June 9, 2016, more than five years after entry of the judgment of conviction on April 21, 2009.² Thus, Sanderson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Sanderson's petition was successive because he had previously filed two 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.³ *See* NRS 34.810(2). Sanderson's petition was

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

²Sanderson did not pursue a direct appeal.

³Sanderson filed postconviction petitions for a writ of habeas corpus on February 4, 2010, and December 24, 2012. Sanderson did not appeal from either of the district court's orders denying the petitions.

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procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

First, Sanderson 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, the revision of statutes violate separation of powers principles, and the laws authorizing the revised statutes were not passed in accordance with the Nevada Constitution.

These claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Sanderson's petition. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). Further, these claims were reasonably available to be raised in a timely petition and Sanderson 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). Therefore, the district court properly dismissed the petition as procedurally barred.


Second, Sanderson appeared to argue he had good cause due to the ineffective assistance of counsel. However, Sanderson's claims of ineffective assistance of counsel were procedurally barred because they were reasonably available to be raised in Sanderson's first petition, and therefore, cannot constitute cause for procedurally barred claims. See *id.* (“[I]n order to constitute adequate cause, the ineffective assistance of


counsel claim itself must not be procedurally barred.”). Therefore, the district court properly dismissed the petition as procedurally barred.


Third, Sanderson claimed he had good cause because he lacks legal training and has to rely on inmate law clerks. However, these issues did not constitute an impediment external to the defense that prevented Sanderson from complying with the procedural bars. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition).

Fourth, Sanderson claimed he had good cause because prisoners in his housing unit have limited access to the law library. Sanderson failed to demonstrate lack of access to the law library deprived him of meaningful access to the courts. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996) (“an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense”). Sanderson filed previous postconviction petitions for a writ of habeas corpus and additional documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to the prison law library. *See id.* (a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.”). Moreover, Sanderson did not demonstrate any of his claims could not have been raised in his prior petitions, and therefore, he failed to demonstrate official interference caused him to be unable to comply with the procedural bars. *See Hathaway*, 119 at 252, 71 P.3d at 506.

In his petition for a writ of extraordinary relief filed on June 9, 2016, Sanderson challenged his judgment of conviction, and requested the district court to expunge his conviction and order his immediate release from prison. We conclude the district court properly dismissed the petition because Sanderson improperly challenged the validity of a judgment of conviction through a petition seeking extraordinary relief. See NRS 34.160; NRS 34.320; NRS 34.724(2)(b) (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). Accordingly, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Ivan Richard Sanderson
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk