

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH BRIAN HAGER,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN,  
SOUTHERN DESERT CORRECTIONAL  
CENTER; AND THE STATE OF  
NEVADA,  
Respondents.

No. 71181

**FILED**

JUL 12 2017

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

*ORDER AFFIRMING AND DISMISSING*

Joseph Brian Hager appeals from orders of the district court dismissing a postconviction petition for a writ of habeas corpus, a petition for a writ of extraordinary relief, and an order denying a motion requesting to adjust restitution.<sup>1</sup> First Judicial District Court, Storey County; James Todd Russell, Judge.

Hager argues the district court erred in dismissing his postconviction petition as procedurally barred. Hager filed his petition on May 13, 2016, more than three years after entry of the judgment of conviction on November 21, 2012.<sup>2</sup> Thus, Hager's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hager's petition was successive because he had previously filed a postconviction petition for a writ of

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

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

habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>3</sup> See NRS 34.810(2). Hager's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Hager 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 creation of the Nevada Revised Statutes, the revision of statutes violated separation of powers principles, and the laws authorizing the revised statutes were not passed in accordance with the Nevada Constitution and other laws.

These claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Hager'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 Hager did not demonstrate an impediment external to the defense prevented him from doing so. See *Hathaway v. State*, 119

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<sup>3</sup>*Hager v. State*, Docket No. 64825 (Order of Affirmance, July 22, 2014).

Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court properly dismissed the petition as procedurally barred.<sup>4</sup>

In his petition for a writ of extraordinary relief filed on May 13, 2016, Hager 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 Hager 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).

Next, Hager argues the district court was biased against him because the district court agreed with the State's assertions that his petition was procedurally barred. However, "rulings and actions of a judge during the course of official judicial proceedings do not establish" bias sufficient to disqualify a district court judge. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988). Therefore, Hager fails to demonstrate this claim has merit.

Finally, Hager argues the district court erred in denying his motion requesting to adjust restitution. However, we lack jurisdiction to consider this portion of Hager's appeal because no statute or court rule


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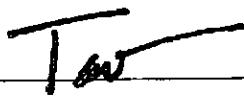
<sup>4</sup>We also conclude the district court did not abuse its discretion in declining to appoint postconviction counsel to represent Hager in this matter. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017).


permits an appeal from such an order. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we dismiss this portion of Hager's appeal.

Having concluded Hager is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED regarding the postconviction petition for a writ of habeas corpus and the petition for a writ of extraordinary relief and DISMISS the appeal from the order denying the motion to adjust restitution.<sup>5</sup>

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

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

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

cc: Hon. James Todd Russell, District Judge  
Joseph Brian Hager  
Attorney General/Carson City  
Storey County District Attorney  
Storey County Clerk

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<sup>5</sup>We have reviewed all documents Hager has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Hager has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.