

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OMAR HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71371

FILED

AUG 15 2017

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

ORDER OF AFFIRMANCE

Omar Hernandez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Hernandez argues the district court erred in denying his petition as procedurally barred. Hernandez filed his petition² on April 21, 2016, more than 13 years after entry of the judgment of conviction on July 1, 2002.³ Thus, Hernandez' petition was untimely filed. See NRS 34.726(1). Moreover, Hernandez' petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous

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

²Hernandez filed a petition for a writ of extraordinary relief and multiple documents containing various titles. Due to the nature of the claims raised, the district court properly construed Hernandez' documents as a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction).

³Hernandez did not pursue a direct appeal.

petitions.⁴ See NRS 34.810(2). Hernandez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Hernandez 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.

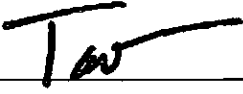
These claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Hernandez' petition. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional *power*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

⁴*Hernandez v. State*, Docket No. 69001 (Order of Affirmance, April 2016); *Hernandez v. State*, Docket No. 54791 (Order of Affirmance, December 10, 2010). Hernandez also filed a postconviction petition for a writ of habeas corpus in the district court on June 16, 2011, but he did not appeal from the denial of that petition.

Next, Hernandez argues the district court erred in denying the petition without conducting an evidentiary hearing and permitting discovery. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Hernandez' claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. In addition, because the district court did not set an evidentiary hearing, Hernandez was not entitled to conduct discovery. See NRS 34.780(2). Therefore, the district court properly denied the petition without conducting an evidentiary hearing and permitting discovery. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁵We also conclude the district court did not abuse its discretion in declining to appoint postconviction counsel to represent Hernandez in this matter. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

cc: Hon. Douglas Smith, District Judge
Omar Hernandez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk