

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72849

**FILED**

DEC 14 2017

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

*ORDER OF AFFIRMANCE*

Frank Milford Peck appeals from a district court order denying the postconviction petition for writ of habeas corpus he filed on October 4, 2016, and amended on January 27, 2017.<sup>1</sup> Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Peck's petition was untimely because it was filed more than 16 years after the remittitur on direct appeal was issued on September 19, 2000,<sup>2</sup> and it was successive because he had previously filed four postconviction petitions for writs of habeas corpus.<sup>3</sup> See NRS 34.726(1); NRS 34.810(2). Consequently, Peck's petition was procedurally barred absent a demonstration of good cause and actual prejudice or that failure to

---

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

<sup>2</sup>See *Peck v. State*, 116 Nev. 840, 7 P.3d 470 (2000).

<sup>3</sup>See *Peck v. State*, Docket No. 60878 (Order of Affirmance, January 16, 2013); *Peck v. State*, Docket No. 60343 (Order of Affirmance, December 12, 2012); *Peck v. State*, Docket No. 57968 (Order of Affirmance, July 15, 2011); *Peck v. State*, Docket No. 42672 (Order of Affirmance, July 11, 2005).

consider his claims would result in a fundamental miscarriage of justice. See NRS 34.726(1); NRS 34.810(3); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

Peck claimed he had good cause to overcome the procedural bars because his claim challenged the district court's jurisdiction to adjudicate his case. To this end, Peck argued the bill creating the Nevada Revised Statutes was flawed and unconstitutional because the procedural requirements for enacting a bill into law were not followed, justices of the Nevada Supreme Court improperly participated in the legislative process, and the law does not contain an enacting clause.

Peck has failed to demonstrate good cause because his claim could have been raised in a timely petition and ignorance of the law is not an impediment external to the defense. See *Hathaway v. State*, 119 Nev. 24, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Moreover, Peck failed to demonstrate his claim implicated the jurisdiction of the district court. 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 courts’ statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)).

Peck confuses Nevada's actual laws with Nevada's codified statutes. The Nevada Revised Statutes “constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law.” NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the

Legislative Counsel. See NRS 220.120. The actual laws of Nevada are contained in the Statutes of Nevada.<sup>4</sup>

Peck also claimed the procedural bars should not apply because he is actually innocent. Peck argued that trial counsel made a dying declaration, during which he made the following statements: (1) trial counsel should have polled the jury following the first trial and objected to the prosecutor's leading questions at the second trial;<sup>5</sup> (2) the district court exceeded its jurisdiction by not directing a favorable verdict during the first trial; (3) the district judge was biased and had previously been disciplined for bias; and (4) the bailiff said the jury in the first trial found Peck not guilty of count one.

Trial counsel's purported dying declaration did not establish Peck's factual innocence, see *Bousley v. United States*, 523 U.S. 614, 623 (1998) ("actual innocence' means factual innocence, not mere legal insufficiency"), nor did it demonstrate, "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him," *id.* (internal quotation marks omitted). Therefore, Peck failed to show he suffered a fundamental miscarriage of justice. See *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

Peck did not demonstrate good cause or a fundamental miscarriage of justice sufficient to overcome the procedural bars to his

---


<sup>4</sup>The law creating the Nevada Revised Statutes contains an enacting clause and is found in the 1957 Statutes of Nevada, in chapter 2, on page 1.

<sup>5</sup>The jury was unable to reach a verdict at Peck's first trial, and the district court declared a mistrial.

petition. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Lynne K. Simons, District Judge  
Frank Milford Peck  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk