

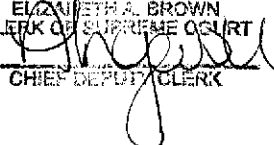
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUANE DAVID GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72614

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Duane David Gray appeals from a district court order dismissing his motion for a new trial. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

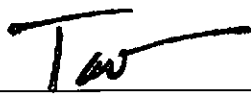
Gray challenges the constitutionality of NRS 176.515(3), the statute which requires a motion for a new trial based on newly discovered evidence be made within two years of the verdict or finding of guilt. "The constitutionality of a statute is a question of law that we review de novo. Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) (footnotes omitted).

Gray claims NRS 176.515(3) violates the Due Process Clause of the United States Constitution because the two-year time limit is too short. However, the Nevada Supreme Court previously addressed this very issue in *Snow v. State*, where it noted a defendant may present his newly discovered evidence in a postconviction petition for a writ of habeas corpus and determined the two-year time limit does not deprive a defendant of his

right to due process of law. 105 Nev. 521, 524, 779 P.2d 96, 98 (1989). Accordingly, we conclude Gray has not demonstrated that NRS 176.515(3) is unconstitutional, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Montero, District Judge
Karla K. Butko
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk