

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE L. LUCIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71488-COA

FILED

JAN 31 2019

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

ORDER OF AFFIRMANCE

Jesse L. Lucio 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; Michael Villani, Judge.

Lucio filed his petition on July 12, 2016, more than seven years after entry of the judgment of conviction on July 1, 2009.² Thus, Lucio's petition was untimely filed. *See* NRS 34.726(1). Lucio's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Lucio claimed the procedural bar did not apply to his petition because he challenged the jurisdiction of the district court. Lucio based his jurisdictional challenge upon an assertion that 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

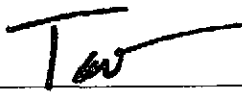
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


²Lucio did not pursue a direct appeal.

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. However, these claims did not implicate the jurisdiction of the courts, and therefore, the procedural time bar applies to Lucio'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 Lucio 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

³We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

cc: Hon. Michael Villani, District Judge
Jesse L. Lucio
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk