

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 75590-COA

**FILED**

FEB 13 2019

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

*ORDER AFFIRMING AND REMANDING TO  
CORRECT JUDGMENT OF CONVICTION*

Alejandro Hernandez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 29, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Hernandez improperly challenged both the validity of his judgment of conviction and the computation of the time he had served in the same petition. *See* NRS 34.738(3). Therefore, the district court was required to resolve the portion of the petition that challenged the judgment of conviction and dismiss the remainder of the petition without prejudice. *Id.* Instead, the district court denied the entire petition as procedurally barred.

In challenging the validity of his judgment of conviction, Hernandez failed to overcome the procedural bar to his petition. His petition was filed more than 21 years after the judgment of conviction was entered on August 2, 1996; consequently, it was untimely filed and

---

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

procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1); *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.3d 1132, 1133-34 (1998) (discussing the proper date for measuring the timeliness of a habeas petition when the direct appeal was dismissed for lack of jurisdiction); *Hernandez v. State*, Docket No. 31643 (Order Dismissing Appeal, January 15, 1998). Hernandez argued his judgment of conviction is fatally defective and his guilty plea is invalid. However, he failed to demonstrate an impediment external to the defense prevented him from raising these claims in a timely-filed habeas petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2006). Therefore, we conclude the district court did not err by denying his challenges to the validity of his judgment of conviction. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

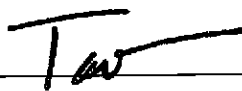
The district court should have dismissed the portion of Hernandez' petition that challenged the computation of time served so that it could be raised in a separate petition. However, we affirm the denial of this portion of the petition because the district court reached the right result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Hernandez claimed the Nevada Department of Corrections was not properly applying his statutory credit pursuant to NRS 209.4465. But his claim lacks merit because NRS 209.4465 only applies to crimes committed on or after July 17, 1997, and he committed his crime on August 12, 1995. *See* NRS 209.4465(1). Therefore, he was not entitled to relief on this claim and we conclude he was not prejudiced by the district court's failure to adhere to the requirements of NRS 34.738(3).


In reviewing the judgment of conviction, we observed several clerical errors. The judgment of conviction does not set forth Hernandez'

plea nor does it reference the statutes under which he was sentenced. See NRS 176.105(1) (1993). Therefore, we remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction. See NRS 176.565; *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (holding that a district court lacks jurisdiction to enter an amended judgment of conviction before this court issues the remittitur in the case). Accordingly, we

ORDER the judgment of the district court AFFIRMED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. Barry L. Breslow, District Judge  
Alejandro Hernandez  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk