

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76530-COA

GARY MARION COSTA-AYRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

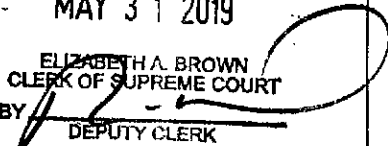
No. 76531-COA

GARY MARION COSTA-AYRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76532-COA

FILED

MAY 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Marion Costa-Ayres appeals from a district court order denying three identical postconviction petitions for a writ of habeas corpus filed in district court case numbers CR7876, CR7877, and CR7878 on June 26, 2018.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

¹These appeals have been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

Costa-Ayres filed his petitions more than three years after entry of the judgments of conviction on October 15, 2014.² Thus, Costa-Ayres' petitions were untimely filed. *See* NRS 34.726(1). Costa-Ayres' petitions were procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

As good cause to overcome the procedural bars, Costa-Ayres claimed he was actually innocent and the district court lacked jurisdiction to convict him because Nevada Supreme Court justices were improperly appointed to the commission to create the Nevada Revised Statutes, and therefore, the Nevada Revised Statutes were not properly enacted. Specifically, he claimed the commission constituted an office and Nevada Supreme Court justices were specifically prohibited by the constitution from holding any office other than a judicial office. He also claimed this violated the separation of powers doctrine because the justices were performing a legislative task. Thus, he claimed, because the commission that helped create the Nevada Revised Statutes was unconstitutional, the Nevada Revised Statutes were also unconstitutional. Therefore, he could not be convicted of crimes that did not exist and the district court lacked jurisdiction over him because there were no statutes that outlawed his behavior.

Costa-Ayres failed to demonstrate good cause to overcome the procedural bars because his claims lacked merit. Costa-Ayres failed to demonstrate a position on the commission that helped create the Nevada Revised Statutes was a public office that a Supreme Court justice was not allowed to hold. *See* Nev. Const. art. 6, § 11; NRS 281.005. Therefore,


²Costa-Ayres did not appeal from his judgments of conviction.


Costa-Ayres failed to demonstrate it was unconstitutional for the justices to be a part of the commission, or that they violated the separation of powers doctrine, see *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) ("The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch."). Accordingly, he failed to demonstrate he was actually innocent, see *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), or that the district court lacked jurisdiction to convict him. See Nev. Const. art. 6, § 6; NRS 171.010.

Further, these claims were reasonably available to be raised in a timely postconviction petition, and Costa-Ayres did not demonstrate an impediment external to the defense prevented him from doing so. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court properly denied the petitions, and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Gary Marion Costa-Ayres
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk