

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO GABRIEL ESCAMILLA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70940

FILED

MAY 16 2017

ELIZABETH A. BROWN  
CLERK OF THE COURT  
BY: *[Signature]*  
CLERK

ORDER OF AFFIRMANCE

Francisco Escamilla appeals from an order of the district court denying the “Common law writ’ petition for a writ of habeas (post-conviction) (lack of court’s ‘subject matter jurisdiction’) NRS constitutional failures/ineffective assistance of counsel unlawful imprisonment” and the petition for a writ of extraordinary relief he filed on March 10, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Escamilla filed his petition more than six years after issuance of the remittitur on direct appeal on June 9, 2009. *See Escamilla v. State*, Docket No. 51725 (Order of Affirmance, May 12, 2009). Thus, Escamilla’s petition was untimely filed. *See* NRS 34.726(1). Escamilla’s petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Escamilla claimed he had good cause to overcome the procedural bar because his claims were based on newly discovered evidence the Nevada Revised Statutes were not properly enacted and

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

because subject matter jurisdiction can be raised at any time. Escamilla claimed the enactment of the Nevada Revised Statutes was flawed and unconstitutional because several requirements of the bill creating the Nevada Revised Statutes were not met and members of the Nevada Supreme Court improperly participated in their creation in 1957.

Escamilla failed to demonstrate good cause to overcome the procedural bar because his claims regarding the Nevada Revised Statutes were available to be raised in a timely petition and ignorance of the law is not an impediment external to the defense. *See Hathaway v. State*, 119 Nev. 248, 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). Escamilla also failed to demonstrate his claims regarding the Nevada Revised Statutes 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 court’s statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)).

Escamilla conflates the laws of Nevada with the codified statutes. The Nevada Revised Statutes merely “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. Thus, Escamilla failed to demonstrate the district court lacked subject matter jurisdiction over him.

On appeal, Escamilla also claims he has good cause because his previous petition was untimely filed based on ineffective assistance of trial and appellate counsel. This claim was not raised in his petition filed

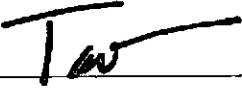
below, and we decline to address it for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Accordingly, Escamilla failed to demonstrate good cause to overcome the procedural bar, and we conclude the district court did not err in denying the petition as procedurally barred.

In his petition for a writ of extraordinary relief, Escamilla challenged his judgment of conviction, and requested the district court expunge his conviction and order his immediate release from prison. We conclude the district court did not err by denying the petition because Escamilla improperly challenged the validity of a judgment of conviction through a petition for a writ of extraordinary relief. See NRS 34.160; NRS 34.320; NRS 34.724(2) (stating a postconviction petition for a writ of habeas corpus is the proper vehicle with which to challenge a judgment of conviction). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>We conclude the district court did not abuse its discretion by denying Escamilla's "warning" and "notification to the court." We also conclude the district court did not abuse its discretion by declining to appoint postconviction counsel, see NRS 34.750(1), or by declining to conduct an evidentiary hearing, see *Rubio v. State*, 124 Nev. 1032, 1046 and n.53, 194 P.3d 1224, 1233-34 and n.53 (2008).

cc: Hon. Eric Johnson, District Judge  
Francisco Gabriel Escamilla  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk