

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN J. GARCIA, A/K/A JACOBO J.
GARCIA,
Appellant,
vs.
BRIAN E. WILLIAMS, WARDEN,
Respondent.

No. 71006

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Juan J. Garcia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus, a petition for a writ of extraordinary relief, and a motion to appoint counsel.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Garcia argues the district court erred in denying his petition as procedurally barred. Garcia filed his petition on April 4, 2016, more than eight years after issuance of the remittitur from Garcia's direct appeal filed pursuant to *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) on June 27, 2007.² Thus, Garcia's petition was untimely filed. See NRS 34.726(1). Moreover, Garcia's petition was successive because he had previously filed several postconviction petitions for a writ of habeas

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

²*Garcia v. State*, Docket No. 47059 (Order Affirming in Part and Reversing in Part and Remanding, May 31, 2007). Following this decision the district court entered an amended judgment of conviction on December 3, 2007.

corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Garcia's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Garcia claimed the procedural bars did not apply to his petition because he challenged the jurisdiction of the district court. He asserted 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 Statute Revision Commission, they violate separation of powers principles, and there is no evidence the laws were properly introduced or passed by the Legislature. These issues did not demonstrate good cause to excuse Garcia's delay.

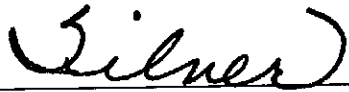
These claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Garcia's petition. See Nev. Const. art. 6, § 6; NRS 171.010 *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court's statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)). Further, these claims were reasonably available to be raised in a timely petition and Garcia did not demonstrate an impediment external

³*Garcia v. State*, Docket No. 71005 (Order of Affirmance, February 23, 2017); *Garcia v. Warden*, Docket No. 70604 (Order of Affirmance, February 23, 2017); *Garcia v. State*, Docket No. 65158 (Order of Affirmance, July 23, 2014); *Garcia v. State*, Docket No. 62119 (Order of Affirmance, July 23, 2013); *Garcia v. State*, Docket No. 56137 (Order of Affirmance, March 29, 2011).

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.⁴

In his petition for a writ of extraordinary relief filed on April 4, 2016, Garcia challenged his judgment of conviction, and requested the district court to expunge his conviction and order his immediate release from prison. We conclude the district court properly denied the petition because Garcia improperly challenged the validity of a judgment of conviction through a petition for a writ of extraordinary relief. *See* NRS 34.160; NRS 34.170; 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); *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Silver


_____, J.
Gibbons

⁴We also conclude the district court did not abuse its discretion in denying Garcia's motion to appoint postconviction counsel given the lack of complexity for this matter. *See* NRS 34.750(1).

⁵The Honorable Jerome T. Tao, Judge, did not participate in the decision in this matter.

cc: Hon. Michelle Leavitt, District Judge
Juan J. Garcia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk