

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IRVIN EUGENE MCQUEEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

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Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

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No. 76749 COA

FILED

SEP 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

No. 76750-COA

No. 77355-COA

No. 77357-COA

ORDER OF AFFIRMANCE

Irvin Eugene McQueen appeals from district court orders denying postconviction petitions for a writ of habeas corpus filed in district court case numbers PC 8161 (Docket No. 76749), PC 7822A (Docket No.

76750), PC 6639 (Docket No. 77355), and PC 7614A (Docket No. 77357). Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Docket No. 76749

McQueen filed his petition on December 27, 2017, more than two years after entry of the judgment of conviction on December 17, 2015.¹ Thus, McQueen's petition was untimely filed. See NRS 34.726(1). McQueen's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.*

McQueen appeared to assert the procedural time bar was inapplicable because he can challenge his sentence at any time. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” see *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and McQueen did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely-filed petition, see *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

To the extent McQueen contended he suffered from an illegal sentence because his sentence exceeded the permissible minimum sentence, his claim lacked merit. McQueen's sentence of 19 to 48 months for his conviction of attempted intimidating a witness was within the parameters of the relevant statutes. See NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 199.240(2). Therefore, McQueen failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). McQueen's additional claims fell outside the narrow scope of claims permissible in a motion to

¹McQueen did not pursue a direct appeal.

correct an illegal sentence. *See id.* Therefore, the district court did not err by denying relief.

Docket No. 76750

McQueen filed his petition on December 28, 2017, more than two years after entry of the judgment of conviction on January 25, 2015.² Thus, McQueen's petition was untimely filed. *See* NRS 34.726(1). McQueen's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

McQueen appeared to assert the procedural time bar was inapplicable because he can challenge his sentence at any time. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *see Eighth Judicial Dist. Court (Riker)*, 121 Nev. at 231, 112 P.3d at 1074, and McQueen did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely-filed petition, *see Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

To the extent McQueen contended he suffered from an illegal sentence because his sentence exceeded the permissible minimum sentence, his claim lacked merit. McQueen's sentence of 19 to 48 months for his conviction of attempted battery causing substantial bodily harm was within the parameters of the relevant statutes. *See* NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 200.481(2)(b). Therefore, McQueen failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. McQueen's additional claims fell outside the narrow scope of claims permissible in a

²McQueen did not pursue a direct appeal.

motion to correct an illegal sentence. *See id.* Therefore, the district court did not err by denying relief.

Docket No. 77355

McQueen filed his petition on January 4, 2018, more than two years after entry of the judgment of conviction on December 17, 2015.³ Thus, McQueen's petition was untimely filed. *See* NRS 34.726(1). McQueen's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

McQueen appeared to assert the procedural time bar was inapplicable because he can challenge his sentence at any time. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *see Eighth Judicial Dist. Court (Riker)*, 121 Nev. at 231, 112 P.3d at 1074, and McQueen did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely-filed petition, *see Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

To the extent McQueen contended he suffered from an illegal sentence because his sentence exceeded the permissible minimum sentence, his claim lacked merit. McQueen's sentence of 19 to 48 months for his conviction of attempted injuring or tampering with a motor vehicle was within the parameters of the relevant statutes. *See* NRS 193.130(2)(d); NRS 195.155(1); NRS 193.330(1)(a)(4); NRS 205.274(1). Therefore, McQueen failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. McQueen's additional claims fell outside the narrow scope of claims

³McQueen did not pursue a direct appeal.

permissible in a motion to correct an illegal sentence. *See id.* Therefore, the district court did not err by denying relief.

Docket No. 77357

McQueen filed his petition on December 27, 2017, more than two years after entry of the judgment of conviction on January 25, 2015.⁴ Thus, McQueen's petition was untimely filed. *See* NRS 34.726(1). McQueen's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

McQueen appeared to assert the procedural time bar was inapplicable because he can challenge his sentence at any time. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *see Eighth Judicial Dist. Court (Riker)*, 121 Nev. at 231, 112 P.3d at 1074, and McQueen did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely-filed petition, *see Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

To the extent McQueen contended he suffered from an illegal sentence because his sentence exceeded the permissible minimum sentence, his claim lacked merit. McQueen's sentence of 19 to 48 months for his conviction of possession of a controlled substance was within the parameters of the relevant statutes. *See* NRS 193.130(2)(e); NRS 453.336(2)(a). Therefore, McQueen failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. McQueen's additional claims fell outside the

⁴McQueen did not pursue a direct appeal.

narrow scope of claims permissible in a motion to correct an illegal sentence.
See id. Therefore, the district court did not err by denying relief.

Having concluded McQueen is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
Irvin Eugene McQueen
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

⁵The district court also concluded the claims McQueen raised in his petitions lacked merit. To the extent the district court considered McQueen's claims on their merits despite his failure to overcome the procedural time bar, this was error because, as stated previously, application of the procedural bars is mandatory. Nevertheless, because the district court properly denied relief, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).