

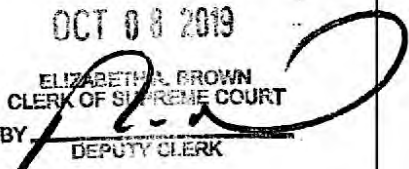
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN DEVON SUTTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77958-COA

**FILED**

OCT 08 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kevin Devon Sutton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 10, 2018. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Sutton filed his petition nearly 17 years after issuance of the remittitur on direct appeal on July 9, 2001. *See Sutton v. State*, Docket No. 34165 (Order of Affirmance, June 11, 2001). Thus, Sutton's petition was untimely filed. *See* NRS 34.726(1). Moreover, Sutton's petition was successive because he had previously filed numerous postconviction petitions for a writ of habeas corpus.<sup>1</sup> *See* NRS 34.810(2). Sutton's petition

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<sup>1</sup>*Sutton v. State*, Docket No. 75988-COA (Order of Affirmance, March 14, 2019); *Sutton v. State*, Docket No. 73651-COA (Order of Affirmance, April 25, 2018); *Sutton v. State*, Docket No. 71025-COA (Order of Affirmance, July 12, 2017); *Sutton v. State*, Docket No. 67584 (Order of Affirmance, December 18, 2015); *Sutton v. State*, Docket No. 65121 (Order of Affirmance, September 18, 2014); *Sutton v. State*, Docket No. 64244 (Order of Affirmance, June 11, 2014); *Sutton v. State*, Docket No. 53466 (Order of Affirmance, January 12, 2010); *Sutton v. State*, Docket No. 40477 (Order of Affirmance, July 8, 2004).

was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Sutton claims on appeal that his petition was not subject to the procedural bars because he was challenging the district court's jurisdiction, and jurisdiction can be challenged at any time. Sutton claimed below that the trial court lacked jurisdiction to sentence him for the deadly weapon enhancement because it is a non-crime and a person cannot be sentenced for a non-crime. Sutton's claim did not implicate the jurisdiction of the district court. *See* Nev. Const. art. 6, § 6; NRS 171.010. Because Sutton challenged the validity of his conviction, his petition was subject to the procedural bars. *See* NRS 34.726(1); 34.810(2). Sutton failed to allege good cause and prejudice to overcome the procedural bars. Accordingly, we conclude the district court did not err by denying the petition as procedurally barred, and we

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

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>2</sup>We conclude the district court erred by applying statutory laches as a procedural bar without first giving Sutton an opportunity to rebut the presumption of prejudice. *See* NRS 34.800(2). We nevertheless affirm for the reasons discussed above.

cc: Hon. Joseph Hardy, Jr., District Judge  
Kevin Devon Sutton  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk