

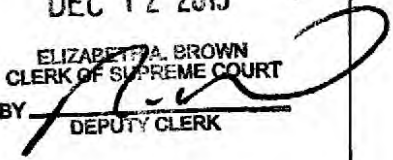
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY LYNN FRANKLIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78762-COA

**FILED**

DEC 12 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jeffrey Lynn Franklin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 22, 2019. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Franklin filed his petition eleven years after issuance of the remittitur on direct appeal on January 22, 2008. *See Franklin v. State*, Docket No. 48848 (Order of Affirmance, December 27, 2007). Franklin's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Franklin's petition was therefore procedurally barred absent a demonstration of good

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<sup>1</sup>*Franklin v. State*, Docket No. 73092-COA (Order of Affirmance, January 9, 2018); *Franklin v. State*, Docket No. 67755-COA (Order of Affirmance, August 4, 2015); *Franklin v. State*, Docket No. 67295-COA (Order of Affirmance, May 20, 2015); *Franklin v. State*, Docket No. 65231 (Order of Affirmance, July 23, 2014); *Franklin v. State*, Docket No. 63352 (Order of Affirmance, December 12, 2013); *Franklin v. State*, Docket No. 52422 (Order of Affirmance, December 1, 2009).

cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Franklin was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Franklin did not allege good cause or prejudice to overcome the procedural bars, including laches. He instead argued the procedural bars did not apply to his claims. Franklin claimed his habitual criminal sentence was illegal and the district court relied on mistaken assumptions about his criminal history in adjudicating him a habitual criminal. Franklin's claims, although raised in a pleading for postconviction habeas relief, were couched in terms of a motion to modify or correct an illegal sentence. And such claims, if properly raised, are not subject to the procedural requirements of NRS chapter 34. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). However, the scope of such claims is narrow.

A motion to modify a sentence is limited to claims that the sentence was "based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment." *Id.* A motion to correct an illegal sentence may "address only the facial legality of a sentence." *Id.* Because it presupposes a valid conviction, a motion to correct an illegal sentence cannot "be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence." *Id.* (internal quotation marks omitted).

Franklin first claimed the State failed to provide sufficient proof of his prior felony convictions, resulting in a habitual criminal

sentence that was based on mistaken assumptions about his criminal record. Notably, Franklin did not challenge the validity of the prior felonies used to support adjudicating him a habitual criminal. Rather, he challenged only the process by which he was so adjudicated. Accordingly, this claim was outside the scope of a motion to modify or correct an illegal sentence.

Franklin also claimed his habitual criminal sentence was illegal because the State's notice of intent to seek habitual criminal treatment was improper. This claim challenged events that occurred prior to the imposition of Franklin's sentence and was thus also outside the scope of claims permissible in a motion to modify or correct an illegal sentence.

As discussed above, Franklin's petition was procedurally barred, and he failed to allege good cause and prejudice to overcome the bars or to overcome the presumption of prejudice to the State. Further, even were Franklin's petition construed as a motion to modify or correct an illegal sentence, his claims were outside the scope of such motions. For these reasons, we conclude the district court did not err by denying Franklin's petition.


Finally, the district court denied Franklin's motion to appoint postconviction counsel. The issues Franklin presented were not difficult, he appeared able to comprehend the proceedings, and it does not appear counsel was necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Franklin's motion for the appointment of postconviction counsel. *See* NRS 34.750(1); *see*

generally *Renteria-Novoa v. State*, 133 Nev. 75, 391 P.3d 760 (2017).

Accordingly, we

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

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

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

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

cc: Hon. Tierra Danielle Jones, District Judge  
Jeffrey Lynn Franklin  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>In his informal brief, Franklin appears to argue that federal tolling standards render his petition timely. This argument was not raised below, and we need not consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Further, we note the Nevada Supreme Court has rejected federal tolling standards. *See Brown v. McDaniel*, 130 Nev. 565, 575-76, 331 P.3d 867, 874 (2014).