

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 79999-COA

FILED

MAY 15 2020

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

ORDER OF AFFIRMANCE

Joel Burkett appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 5, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Burkett filed his petition more than 36 years after issuance of the remittitur on direct appeal on May 10, 1983, *see Burkett v. State*, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983), and more than one year after his amended judgments of conviction were filed on February 28, 1994, and March 2, 2018.¹ Also, Burkett's petition was filed more than 26 years after the effective date of NRS 34.726. *See* 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Burkett's petition was therefore untimely filed. *See* NRS 34.726(1). Burkett's petition was also successive insofar as

¹Burkett did not appeal from either amended judgment of conviction.

he could have raised his claims in a previous petition, and an abuse of the writ insofar as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Burkett's petition was therefore 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).

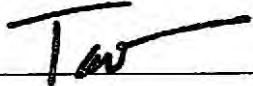
Burkett claimed he had good cause to excuse his procedural bars because his claim was not available to raise until June 2019. Burkett claimed his sentence has become unconstitutional because the conditions of his confinement have so affected his mental health that he will never be able to meet the requirements to become a good candidate for parole. Burkett failed to demonstrate actual prejudice. Burkett's ability or inability to meet the requirements to become a viable candidate for parole do not affect the validity of his judgment of conviction. Further, we note that challenges to the conditions of confinement are not cognizable in a petition for a writ of habeas corpus. See *Bowen v. Warden*, 100 Nev. 489, 686 P.2d 250 (1984); see also *Sandin v. Conner*, 515 U.S. 472, 486 (1995) (holding that liberty interest protected by the Due Process Clause will generally be

²See *Burkett v. State*, Docket No. 63661 (Order of Affirmance, January 16, 2014); *Burkett v. State*, Docket No. 45769 (Order of Affirmance, November 15, 2005); *Burkett v. State*, Docket No. 41504 (Order of Affirmance, March 5, 2004); *Burkett v. State*, Docket No. 34767 (Order of Affirmance, July 10, 2001). Burkett also filed postconviction petitions for a writ of habeas corpus on February 2, 1994, and on December 7, 2015. He was granted relief for those petitions and did not appeal the district court's decisions.

limited to restraint that imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life). We therefore conclude the district court did not err by denying Burkett's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk