

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR PEREZ-MARQUEZ,  
Appellant,  
vs.  
BRIAN SANDOVAL; JERRY HOWELL,  
WARDEN; AND THE STATE OF  
NEVADA,  
Respondents.

No. 80731-COA

**FILED**

NOV 23 2020

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

OSCAR PEREZ-MARQUEZ,  
Appellant,  
vs.  
BRIAN SANDOVAL; JERRY HOWELL,  
WARDEN; AND THE STATE OF  
NEVADA,  
Respondents.

No. 80732-COA

OSCAR PEREZ-MARQUEZ,  
Appellant,  
vs.  
BRIAN SANDOVAL; JERRY HOWELL,  
WARDE; AND THE STATE OF  
NEVADA,  
Respondents.

No. 80820-COA

*ORDER AFFIRMING IN PART AND DISMISSING IN PART*

In Docket No. 80731, Oscar Perez-Marquez appeals from an order of the district court denying a motion for modification of sentence filed on August 20, 2019. In Docket No. 80732, Perez-Marquez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 17, 2019. In Docket No. 80820, Perez-Marquez

appeals from a purported order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2018. These cases were consolidated on appeal. See NRAP 3(b). Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

*Docket No. 80731*

In his motion, Perez-Marquez challenged the legality of his sentence for bribing or intimidating a witness to influence testimony. He claimed his sentence violated the Double Jeopardy Clause, the sentencing court improperly increased his minimum term, and the sentencing court erred by imposing it to run consecutively to his other sentences even though he was eligible for mandatory probation. Perez-Marquez failed to demonstrate he was entitled to the modification of his sentence, because he failed to allege the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). He also failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. See *id.* The district court did not improperly increase Perez-Marquez's minimum term in violation of the Double Jeopardy Clause, and because Perez-Marquez was convicted of a category C felony, see NRS 199.240, he was not eligible for mandatory probation, see NRS 193.130(2)(c), 2(e). Therefore, we conclude the district court did not err by denying Perez-Marquez's motion.<sup>1</sup>

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<sup>1</sup>In his opening brief on appeal, Perez-Marquez raises challenges to the application of statutory credits to his minimum terms. Because these claims were not raised in his motion below, we decline to consider them for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

*Docket No. 80732*

Perez-Marquez filed his petition nine years after entry of the judgment of conviction on March 11, 2010.<sup>2</sup> Thus, Perez-Marquez's petition was untimely filed. *See* NRS 34.726(1). Moreover, Perez-Marquez's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.<sup>3</sup> *See* NRS 34.810(2). Perez-Marquez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Perez-Marquez argued in his petition below that he was not attacking his judgment of conviction and instead was challenging the constitutionality of the Nevada Revised Statutes. Perez-Marquez appeared to argue that because he was not challenging his judgment of conviction, the district court could hear his claims. Contrary to Perez-Marquez's argument, a challenge to the constitutionality of the Nevada Revised Statutes is a challenge to his judgment of conviction, and his petition was subject to the procedural bars. Therefore, Perez-Marquez was required to allege good cause and prejudice to overcome the procedural bars. Perez-Marquez failed to allege good cause in his petition; therefore, we conclude the district court did not err by denying the petition as procedurally barred.

On appeal, Perez-Marquez argues his claims challenged the subject matter jurisdiction of the trial court and that he was actually legally innocent of the crimes he was convicted of. These claims were not raised in Perez-Marquez's petition below; therefore, we decline to consider them for the first time on appeal. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276.

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<sup>2</sup>Perez-Marquez did not appeal from his judgment of conviction.

<sup>3</sup>Perez-Marquez did not appeal from the denial of this petition.

Finally, Perez-Marquez argues the district court erred by denying his motion for the appointment of counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court found the petition was procedurally barred pursuant to NRS 34.810(2) and declined to appoint counsel. Because the petition was subject to summary dismissal, we conclude the district court did not abuse its discretion by declining to appoint counsel. See NRS 34.745(4).


*Docket No. 80820*

This court's review of this appeal reveals a jurisdictional defect. The record before this court reflects that no decision, oral or written, had been made on the petition at issue when Perez-Marquez filed his appeal on March 18, 2020. Because Perez-Marquez fails to designate an appealable order, we lack jurisdiction over this appeal, and we dismiss this appeal.

Having concluded that Perez-Marquez is not entitled to relief, we

ORDER the judgments of the district court in Docket Nos. 80731 and 80732 AFFIRMED and the appeal filed in Docket No. 80820 DISMISSED.

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

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

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

cc: Hon. Kimberly A. Wanker, District Judge  
Oscar Perez-Marquez  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk