

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON JONES,
Appellant,
vs.
JO GENTRY, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 84331-COA

FILED

SEP 22 2022

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

ORDER OF AFFIRMANCE

Jason Jones appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Jones argues the district court erred by denying his petition as procedurally barred. Jones filed his petition on February 28, 2017, more than two years after entry of the judgment of conviction on October 3, 2014.¹ Thus, Jones' petition was untimely filed. *See* NRS 34.726(1). Moreover, Jones' petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(2).

¹Jones did not pursue a direct appeal from entry of the October 3, 2014, judgment of conviction.

²Jones filed a postconviction petition for a writ of habeas corpus in the district court on October 26, 2015, and the district court denied that petition. The Nevada Supreme Court dismissed Jones' appeal from the order denying that petition for lack of jurisdiction because the notice of

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

Jones argues the district court erred by applying the procedural bars to his petition. In his petition, Jones did not argue good cause or actual prejudice. Instead, he appeared to assert the procedural bars did not apply to his petition because he did not file a postconviction petition for a writ of habeas corpus and he may challenge the validity of the Nevada Revised Statutes in any kind of action or proceeding.

Jones filed a petition entitled "an original action in proceeding for petition for writ of habeas corpus in accordance to the provisions allowed in Bible v. Malone decision." The district court construed the petition as a postconviction petition and denied the petition as procedurally barred. Jones' petition challenged the validity of the commission that helped to create the Nevada Revised Statutes. Jones argued the Nevada Revised Statutes were invalid because the commission that helped to create them was also invalid. Jones also asserted his conviction was invalid because it was based upon the improperly enacted Nevada Revised Statutes.

Given the nature of Jones' claims, we conclude the district court properly construed Jones' petition to be a postconviction petition for a writ of habeas corpus, see NRS 34.724(2)(b) (stating a postconviction petition for a writ of habeas corpus is the exclusive postconviction remedy for challenging a judgment of conviction), and properly applied the procedural

appeal was untimely filed. See *Jones v. State*, No. 71938, 2017 WL 1019335 (Nev. March 14, 2017) (Order Dismissing Appeal).

bars contained in NRS Chapter 34, *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”). Moreover, Jones’ claims were reasonably available to be raised in a timely petition, and he did not demonstrate an impediment external to the defense prevented him from doing so. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court properly denied the petition as procedurally barred.

Next, Jones argues that the district court erred by ordering the district attorney’s office to prepare the order denying his petition because he believes that the attorney general’s office was better suited to that task. Jones also appears to contend that he should have been able to respond to the State’s proposed order denying his petition, the district court erred by failing to place his petition on its calendar, and the district court erred by failing to enter a written order denying his petition in a timely manner.

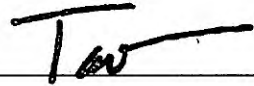
Jones does not identify any inaccuracies contained within the district court’s order, and he fails to demonstrate that the attorney general’s office should have prepared a proposed order. In addition, Jones does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review.

Moreover, as previously discussed, the district court properly denied Jones’ petition. Therefore, any failure of the district court to ensure that Jones had an opportunity to review and respond to the proposed order or to ensure that the order denying the petition was filed in a timely manner was harmless. *See NRS 178.598* (“Any error, defect, irregularity or variance

which does not affect substantial rights shall be disregarded.”). Accordingly, we conclude Jones is not entitled to relief based upon these claims, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Erika D. Ballou, District Judge
Jason Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk