

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY SANTISTEVAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85651-COA

FILED

NOV 22 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Santistevan appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 20, 2022. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Santistevan filed his petition more than seven years after entry of the judgment of conviction on March 19, 2015, and more than six years after entry of the amended judgment of conviction on February 9, 2016.¹ Thus, Santistevan's petition was untimely filed. See NRS 34.726(1). Moreover, Santistevan's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.²

¹No direct appeal was taken from either judgment of conviction.

²See *Santistevan v. State*, No. 83823-COA, 2022 WL 1831278 (Nev. Ct. App. June 2, 2022) (Order of Affirmance); *Santistevan v. State*, No. 76729-COA, 2019 WL 1530155 (Nev. Ct. App. Apr. 5, 2019) (Order of Affirmance). Santistevan also filed a postconviction petition for a writ of

See NRS 34.810(3).³ Santistevan's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

Santistevan contended that he had good cause to excuse the procedural bars because his claim only became available to him on July 1, 2021. In his petition, Santistevan challenged the additional penalties he received on the robbery counts for the use of a deadly weapon. Santistevan's underlying claim was reasonably available to him after entry of the judgment of conviction, and Santistevan did not articulate why he could not raise this claim prior to July 1, 2021. Therefore, the district court did not err by rejecting this good-cause claim. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying Santistevan's petition as procedurally barred.

On appeal, Santistevan claims the district court erred by denying a motion to correct an illegal sentence filed on September 1, 2022. Santistevan did not designate an order denying a motion to correct an illegal sentence in his notice of appeal. Moreover, an appeal from such an order would have been premature because no decision had been made on that motion when Santistevan filed the instant notice of appeal on November 8,

habeas corpus in the district court on February 23, 2016, but he did not appeal from the denial of that petition.

³The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. See A.B. 49, 82d Leg. (Nev. 2023).

2022. See NRS 177.015(3) (stating a defendant “may appeal from a final judgment or verdict in a criminal case”). Therefore, we decline to consider Santistevan’s claims regarding his September 1, 2022, motion to correct an illegal sentence.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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