IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER, Appellant, vs. KYLE OLSEN, WARDEN; NNCC; AND THE STATE OF NEVADA, Respondents.	No. 86846-COA
RODERICK STEPHEN SKINNER, Appellant, vs. KYLE OLSEN, WARDEN; NNCC; AND THE STATE OF NEVADA, Respondents.	No. 86893-COA

ORDER OF AFFIRMANCE

Roderick Stephen Skinner appeals from a district court order granting a motion to dismiss a postconviction petition for a writ of habeas corpus filed on March 29, 2022,[1] and dismissing a postconviction petition for a writ of habeas corpus filed on November 15, 2022, and from a district court order denying a "motion for correction of sentence" filed on November 1, 2022. The appeals were consolidated. *See* NRAP 3(b). Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Postconviction petitions for a writ of habeas corpus

Skinner argues the district court erred by dismissing his petitions without conducting an evidentiary hearing. Skinner's March 29,

[1]Skinner filed a duplicate copy of this petition on April 4, 2022.

2022, petition (second petition) and his November 15, 2022, petition (third petition) were filed more than six years after issuance of the remittitur on direct appeal on August 10, 2015. *See Skinner v. State*, No. 66666-COA, 2015 WL 4385812 (Nev. Ct. App. July 14, 2015) (Order of Affirmance). Thus, Skinner's petitions were untimely filed. *See* NRS 34.726(1). Moreover, Skinner's petitions were successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and they 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(3).[3] Skinner's petitions were procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(4). Further, because the State specifically pleaded laches regarding the second petition, Skinner was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Regarding his second petition, Skinner claimed he had good cause because he could not raise his claims of ineffective assistance of counsel at sentencing and on direct appeal until the Nevada Supreme Court issued its decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021). Skinner contended that, prior to *Gonzales*, the law had been inconsistently applied by the State and the district court and that he did not know he could bring his claims until *Gonzales* was decided. To establish good cause, "a petitioner must show that an impediment external to the defense prevented

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[2]*See Skinner v. Baca*, No. 79981-COA, 2021 WL 462832 (Nev. Ct. App. Feb. 8, 2021) (Order of Affirmance).

[3]The 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).

him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). "An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Id.* (internal quotation marks omitted).

Gonzales did not announce a new rule of law; rather, the supreme court merely clarified that NRS 34.810(1)(a) never precluded claims that counsel rendered ineffective assistance at sentencing. *See Gonzales*, 137 Nev. at 403, 492 P.3d at 562 ("In sum, we explicitly hold today what has been implicit in our caselaw for decades."). As such, Skinner's claims were available to be raised prior to the supreme court's decision in *Gonzales*. *See Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312-13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."); *see also Nika v. State*, 124 Nev. 1272, 1286, 198 P.3d 839, 849 (2008) (discussing when a "state court interpretation of a state criminal statute constitutes a change in—rather than a clarification of—the law").

Further, in his previous petition, Skinner alleged claims of ineffective assistance of counsel at sentencing and on appeal, and the district court addressed the petition on the merits. Thus, the State and the district court's purported actions in other cases did not constitute official interference making Skinner's compliance with procedural default rules impracticable. Finally, Skinner did not overcome the presumption of prejudice to the State. *See* NRS 34.800(1), (2) (outlining the presumed prejudice to the State and the petitioner's burden in rebutting that

prejudice). For the foregoing reasons, we conclude the district court did not err by dismissing the second petition as procedurally barred without conducting an evidentiary hearing.[4] *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars).

Skinner also argues that the district court erred by dismissing his third petition instead of transferring it to the First Judicial District Court pursuant to NRS 34.738(1) because the petition "was really an attack on the terms and conditions of his sentence." In his petition, Skinner alleged that conclusions reached by the Division of Parole and Probation in Skinner's presentence investigation report (PSI) were improper because they were not based on standards founded upon objective criteria. Skinner contended that his resulting sentence amounted to cruel and unusual punishment and should be vacated. Skinner did not allege that his time served pursuant to the judgment of conviction had been improperly computed, *see* NRS 34.724(1), and his arguments challenged the validity of his sentence. Thus, the district court was not required to transfer Skinner's petition to another jurisdiction. *See* NRS 34.738(2). Further, to the extent that Skinner's petition alleged that errors regarding his PSI continued to affect the conditions of his confinement, such arguments were not properly raised in a postconviction petition for a writ of habeas corpus. *See Bowen v.*

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[4]Skinner does not argue good cause regarding his third petition on appeal. Therefore, he has waived any challenge to the district court's determination that his third petition was procedurally barred. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an appellant's opening brief are deemed waived).

Warden, 100 Nev. 489, 686 P.2d 250 (1984). Therefore, we conclude Skinner is not entitled to relief based on this claim.

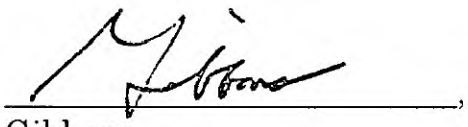
Motion for correction of sentence

In his motion, Skinner sought modification of his sentence because the district court failed to rule on his objections regarding how the scores in his PSI were calculated and thus improperly relied on a PSI that contained what Skinner alleged to be material errors. The district court found that Skinner's claims exceeded the narrow scope of those permissible in a motion seeking modification of a sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (providing "that a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment").

On appeal, Skinner concedes that his claims were outside the scope of a motion to modify a sentence pursuant to *Edwards* but asks this court to expand the holding in *Edwards*. Skinner contends that a miscarriage of justice would result here because his continued detention is based on a PSI that contains errors and because counsel was ineffective. Skinner's claims do not implicate concerns similar to those addressed in *Edwards*. *See id.* at 707, 918 P.2d at 324 (noting that a motion to modify a sentence is "based on very narrow due process grounds" and that all other challenges to a judgment of conviction "must be brought pursuant to NRS 34.720 through NRS 34.830"). And although Skinner recognizes he asks for a change in law, he provides no authority nor substantive argument as to why this court should reexamine *Edwards*, save for his statement that change is warranted to correct the purported miscarriage of justice in his unique case. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)

("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Therefore, we decline Skinner's invitation to expand *Edwards*. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk