

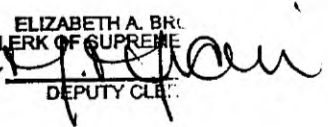
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT ALAN PACE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88306-COA

**FILED**

DEC 09 2021

ELIZABETH A. BRU  
CLERK OF SUPREME  
BY:   
DEPUTY CLERK

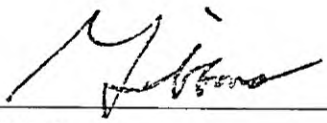
*ORDER OF AFFIRMANCE*

Scott Alan Pace appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 12, 2020, and later filed supplements. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Pace argues that the district court erred by denying his claim that his sentence is illegal and violates the Double Jeopardy Clause because the district court filed an amended judgment of conviction that increased his sentence. This claim is outside the scope of a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a) (stating a postconviction habeas petition stemming from a guilty plea may allege only “that the plea was involuntarily or unknowingly entered or that the plea was entered without the effective assistance of counsel”); *see also Gonzales v. State*, 137 Nev. 398, 403-04, 492 P.3d 556, 562 (2021) (allowing claims that counsel was ineffective at sentencing in a postconviction petition for a writ of habeas corpus following a guilty plea). Further, this claim is waived because it could have been

raised on direct appeal from the amended judgment of conviction.<sup>1</sup> See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (holding claims that could have been raised on direct appeal are waived in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Therefore, we conclude that the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>1</sup>We note that Pace failed to provide this court with a copy of the guilty plea agreement, the change of plea hearing transcript, his petition, the original judgment of conviction, and the amended judgment of conviction. "The burden to make a proper appellate record rests on appellant." *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); see also NRAP 30(b)(3).

<sup>2</sup>We conclude that the district court erred by reaching the merits of the claim. Nevertheless, we affirm for the reasons stated above. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

cc: Hon. Kimberly A. Wanker, District Judge  
TCM Law  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk