

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERALD REY COSTA, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89299-COA

**FILED**

**JUN 30 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jerald Rey Costa, Jr., appeals from a district court order granting a motion to dismiss a postconviction petition for a writ of habeas corpus filed on June 23, 2023.<sup>1</sup> Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Costa filed his petition more than 11 years after issuance of the remittitur on direct appeal on June 5, 2012. *See Costa v. State*, Docket Nos. 59201, 59202, 2012 WL 1655373 (Nev. May 9, 2012) (Order of Affirmance). Thus, Costa's petition was untimely filed. *See* NRS 34.726(1). Moreover, Costa's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and

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<sup>1</sup>Costa further indicated in his notice of appeal that he was appealing the denial of his motion for an extension of time to file an opposition to the State's motion to dismiss. However, he does not provide any argument regarding the district court's denial of that motion in his informal brief on appeal. Therefore, we need not consider this assignment of error. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

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different from those raised in his previous petitions.<sup>2</sup> See NRS 34.810(3).<sup>3</sup> Costa's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4).

Costa claimed he had good cause because he could not raise his claims of ineffective assistance of counsel until the Nevada Supreme Court issued its decision in *Gonzales v. State*, 137 Nev. 398, 492 P.3d 556 (2021), and this court issued its decisions in *Vasquez v. State*, No. 79409-COA, 2020 WL 4696206 (Nev. Ct. App. Aug. 12, 2020) (Order Vacating Judgment and Remanding), and *Vasquez v. State*, No. 82037-COA, 2021 WL 5990167 (Nev. Ct. App. Sept. 28, 2021) (Order of Affirmance). Even assuming those decisions could provide good cause to excuse the procedural bars, Costa's petition was not filed within a reasonable time of the decisions, see *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available), and he failed to demonstrate an impediment external to the defense explained his delay, see *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (recognizing a good-cause claim itself must not be procedurally defaulted). Therefore, Costa did not demonstrate good cause based on this authority.

Costa also raises several good-cause claims for the first time on appeal. Because Costa did not raise these claims below, we decline to

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<sup>2</sup>See *Costa v. State*, Docket Nos. 68853, 68861, 2016 WL 6837855 (Nev. Nov. 17, 2016) (Order of Affirmance). Costa filed a postconviction petition for a writ of habeas corpus on May 24, 2017, and he did not appeal its denial.

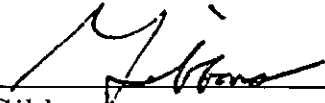
<sup>3</sup>The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. See A.B. 49, 82d Leg. (Nev. 2023).


consider them for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989); *see also Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021) (providing “a petitioner’s explanation of good cause and prejudice for each procedurally barred claim must be made on the face of the petition”). Accordingly, we conclude the district court did not err by denying the petition as procedurally barred.

Finally, Costa makes additional arguments for the first time on appeal. Because Costa did not make these arguments below, we decline to consider them for the first time on appeal. *See Wade*, 105 Nev. at 209 n.3, 772 P.2d at 1293 n.3. Therefore, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Kathleen M. Drakulich, District Judge  
Jerald Rey Costa, Jr.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk