

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ABDIEL SILVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87094-COA

FILED

SEP 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa J. [Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Abdiel Silva appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on February 23, 2023. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

In his petition, Silva contended trial and appellate counsel were ineffective for failing to challenge the constitutionality of his statutes of conviction. In particular, Silva claimed counsel failed to research the history of NRS 200.010, NRS 200.030, NRS 193.165, and NRS 195.020, and had counsel researched this history, counsel would have discovered the statutes were unconstitutional because they were derived from Senate Bill (S.B.) 182. Silva claimed S.B. 182, which was enacted in 1951 and created a commission for the revision and compilation of Nevada laws, was unconstitutional because supreme court justices served on the commission in a nonjudicial public office. Silva further claimed S.B. 182 violated the separation of powers doctrine and that its constitutional infirmity deprived the trial court of subject matter jurisdiction.

To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an

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objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); see also *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying the "reasonably effective assistance" test to claims of ineffective assistance of appellate counsel). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Silva has not demonstrated deficient performance or prejudice because Silva did not show that the trial court lacked subject matter jurisdiction. See Nev. Const. art. 6 § 6; NRS 171.010. Silva further did not show that justices of the Nevada Supreme Court violated the constitution by serving in a nonjudicial public office because he did not show that participating in the commission "[i]nvolve[d] the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty." Nev. Const. Art. 6, § 11; NRS 281.005(1) (defining "Public officer"); 1963 Nev. Stat., ch. 403, preface, at 1011 (providing that the act serves to abolish the statute revision commission and to assign its duties to the Legislative Counsel Bureau).

Moreover, the legislature enacts the actual laws of Nevada, while the Legislative Counsel Bureau—which succeeded the statute

revision commission—codifies and classifies those laws as the Nevada Revised Statutes, grouping laws of similar subject matter together in a logical order, but not itself exercising the legislative function. See NRS 220.110; NRS 220.120(3); NRS 220.170(3); 1963 Nev. Stat., ch. 403, preface, at 1011. Silva accordingly has not shown that the statute revision commission improperly encroached upon the powers of another branch of government, violating the separation of powers. See *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) (“The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.”). Therefore, the district court did not err by denying this claim.¹

On appeal, Silva contends (1) the judges of this court should recuse from this matter because the probability of actual bias is too high to be constitutionally tolerable given the supreme court justices’ prior involvement in revising and compiling the laws of Nevada; and (2) this court cannot perform its constitutional independent function of appellate review because it “cannot sit in review of the [judicial department’s] own revision work performed by their predecessors without bias or prejudice.” A request seeking to disqualify a justice or judge of the Supreme Court or Court of Appeals must be made by motion and comply with certain requirements. See NRAP 35(a). Silva’s claims seeking disqualification or otherwise challenging the propriety of the judges of this court hearing this appeal are

¹To the extent Silva raised other claims of ineffective assistance of counsel based on S.B. 182’s purported unconstitutionality, we likewise conclude Silva failed to demonstrate he was entitled to relief on any such claims.

thus improperly raised in his opening brief, and we decline to consider them.²

Silva also contends this court is not a court of competent jurisdiction because judicial and legislative powers have been commingled since S.B.182's passage. This claim is premised on Silva's constitutional challenges to S.B. 182. Because Silva failed to demonstrate S.B. 182 was unconstitutional, we further conclude Silva is not entitled to relief on this claim. Accordingly,³ we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

²We note that Silva previously filed a motion to disqualify the justices and judges of the Supreme Court and Court of Appeals on the same grounds asserted in his opening brief, and the supreme court denied the motion as untimely. *See Silva v. State*, Docket No. 87094 (Order Denying Motion, September 23, 2024).

³Insofar as Silva raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. David A. Hardy, District Judge
Richard Abdiel Silva
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk