

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL KEVIN GARDENHIRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 90260-COA

**FILED**

SEP 16 2025

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

*ORDER OF AFFIRMANCE*

Michael Kevin Gardenhire appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 11, 2024. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Gardenhire filed his petition more than six years after entry of the judgment of conviction on February 9, 2018.<sup>1</sup> Thus, Gardenhire's petition was untimely filed. *See* NRS 34.726(1). Moreover, Gardenhire's petition constituted an abuse of the writ as he raised claims new and

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<sup>1</sup>Gardenhire's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Gardenhire v. State*, No. 77701, 2019 WL 689892 (Nev. Feb. 13, 2019) (Order Dismissing Appeal). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). In addition, the district court entered an amended judgment of conviction on May 9, 2018, to correct a clerical error, but entry of the amended judgment of conviction did not provide good cause for the delay because all of the claims Gardenhire raised in the instant petition arose out of the proceedings involving his initial judgment of conviction. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

different from those raised in his previous petitions.<sup>2</sup> See NRS 34.810(3). Gardenhire's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4). "In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented 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).

On appeal, Gardenhire challenges the district court's decision to deny his petition as procedurally barred. In his petition, Gardenhire claimed the presentence investigation report (PSI) contained inaccurate information, and as good cause, Gardenhire cited his recent discovery of the concurrence in *Vasquez v. State*, No. 79409-COA, 2020 WL 4696206 (Nev. Ct. App. Aug. 12, 2020) (Order Vacating Judgment and Remanding) (Tao, J., concurring), questioning the validity of the Division of Parole and Probation's sentencing recommendation process. However, the *Vasquez* decision was an unpublished disposition and it accordingly "does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case." NRAP 36(c)(2). Additionally, since the *Vasquez* decision predates August 15, 2024, it may not be cited pursuant to NRAP 36(c)(3) (stating that "[a]


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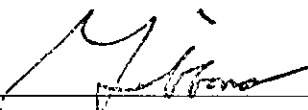
<sup>2</sup>*Gardenhire v. State*, No. 82648-COA, 2021 WL 4988155 (Nev. Ct. App. Oct. 26, 2021) (Order of Affirmance).

party may cite for its persuasive value, if any, an unpublished disposition issued . . . by the Court of Appeals on or after August 15, 2024.”).

Moreover, even assuming the *Vasquez* decision provided good cause to excuse the procedural bars when it was issued, Gardenhire’s petition was filed more than four years after the issuance of that decision, and he failed to demonstrate an impediment external to the defense explained his delay. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that 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); *see also Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (recognizing a good-cause claim itself must not be procedurally defaulted). Therefore, the district court did not err by denying Gardenhire’s petition as procedurally barred.<sup>3</sup>

Having concluded Gardenhire is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>3</sup>To the extent Gardenhire argues on appeal that he is entitled to relief under the fundamental miscarriage of justice standard, he did not raise this claim in his petition, and we decline to consider it for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

cc: Hon. Carli Lynn Kierny, District Judge  
Michael Kevin Gardenhire  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk