

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALBERTO CARO TORRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73387-COA

**FILED**

NOV 06 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Alberto Caro Torres appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on March 29, 2016, and a supplemental petition filed on March 3, 2017. Second Judicial District Court, Washoe County; A. William Maupin, Senior Justice.

Torres' petition was untimely filed because he filed his petition more than one year after entry of the judgment of conviction on October 10, 2014.<sup>1</sup> *See* NRS 34.726(1). Torres' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

In his petition and supplement filed below, Torres challenged his conviction on the grounds the district court lacked subject matter


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<sup>1</sup>Torres did not appeal from his original judgment of conviction. The district court later revoked Torres' probation and Torres filed an appeal from the revocation of his probation. *See Torres v. State*, Docket No. 68659 (Order of Affirmance, December 17, 2015). Torres' claims did not challenge the revocation of probation and, therefore, neither the revocation, nor the appeal from the revocation, would have provided good cause to overcome the procedural bars. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

jurisdiction because the Nevada Revised Statutes were not properly enacted. He argued subject matter jurisdiction claims could be raised at any time. He also claimed counsel was ineffective for failing to discover this issue. The district court found these claims did not overcome the procedural time bar, and denied the petition as procedurally barred.

On appeal, Torres does not challenge the district court's determination regarding the validity of the Nevada Revised Statutes. Instead, Torres argues he is actually innocent because NRS 205.463 is unconstitutional and he should have been convicted of NRS 199.280. This claim was not raised in Torres' petition filed below, and we decline to consider it in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we conclude Torres failed to demonstrate the district court erred by denying his petition as procedurally timed barred, and we

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

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

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<sup>2</sup>Contrary to Torres' claim, the district court's order fully disposed of Torres' petition and supplemental petition, and the district court did not err by denying the petition without first holding an evidentiary hearing on his ineffective-assistance-of-counsel claims. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & 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).

cc: Chief Judge, Second Judicial District Court  
Hon. A. William Maupin, Senior Justice  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk