

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES CLINTON NEWTON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76048-COA

**FILED**

APR 05 2019

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

*ORDER OF AFFIRMANCE*

Charles Clinton Newton, Jr., appeals from an order of the district court denying a postconviction motion to withdraw guilty plea and motion to correct an illegal sentence.<sup>1</sup> Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

*Motion to Withdraw Guilty Plea*

Newton filed his motion<sup>2</sup> on April 5, 2018, more than two years after entry of the judgment of conviction on December 18, 2015.<sup>3</sup> Thus,

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

<sup>2</sup>A postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing. *Harris v. State*, 130 Nev. 435, 448-49, 329, P.3d 628 (2014). Therefore, the district court should have construed the motion as a postconviction petition for a writ of habeas corpus, *see id.*, and applied the procedural bars. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”). Nevertheless, because the district court properly denied relief, we affirm. *See Wyatt v. State*, 86 Nev. 292, 298, 468 P.2d 338, 341 (1970).

<sup>3</sup>Newton did not pursue a direct appeal.

Newton's motion was untimely filed. *See* NRS 34.726(1). Moreover, Newton's motion was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised a claim new and different from those raised in his previous petitions.<sup>4</sup> *See* NRS 34.810(2). Newton's motion was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Newton argued he had good cause because he recently discovered the State improperly declined to allow him to live at his preferred residence and forced him to reside at the Catholic Charities Night Center. However, Newton's claim did not provide good cause because he did not demonstrate an impediment external to the defense prevented him from raising this claim at an earlier time. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court properly denied the motion.

#### *Motion to Correct an Illegal Sentence*

In his motion filed on April 5, 2018, Newton claimed his sentence was illegally entered because his conviction stemmed from the State's error when it improperly refused to approve his preferred residence. Newton's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits

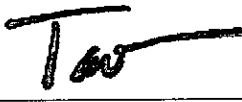
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<sup>4</sup>*Newton, Jr. v. State*, Docket No. 72068-COA (Order of Affirmance, August 16, 2017). Newton also filed postconviction petitions for a writ of habeas corpus in the district court on July 1, 2016, and June 14, 2017, but he did not pursue appeals from the district court's disposition of those petitions.

Newton's claim, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Charles Clinton Newton, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk