

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLEN STANISLOUIS HEUSNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78800-COA

FILED

MAR 12 2020

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

ORDER OF AFFIRMANCE

Allen Stanislaus Heusner appeals from an order of the district court denying a petition for a writ of mandamus and a postconviction petition for a writ of habeas corpus, both filed on March 28, 2018. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Petition for a Writ of Mandamus

Heusner sought a writ of mandamus directing the Governor to perform his duty and take action to repeal the Nevada Revised Statutes. Heusner claimed the statutes arose from the bill that created the statute revision commission in 1951, and that bill was unconstitutional for violating the separation of powers doctrine.

We review the district court's denial of a petition for a writ of mandamus for an abuse of discretion. *Douglas v. State*, 124 Nev. 379, 383, 184 P.3d 1037, 1039 (2008). A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.

Heusner was not entitled to relief because he did not demonstrate that the statute revision commission improperly encroached upon the powers of another branch of government. *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.”). Heusner also failed to demonstrate members of the Nevada Supreme Court violated Nev. Const. Art. 6, § 11, by serving in a non-judicial public office, because he failed to demonstrate that participation in a commission regarding revising Nevada’s statutes involved, as part of the regular and permanent administration of the government, the continuous exercise of a public power, trust, or duty. *See* NRS 281.005(1) (defining public officer). Finally, Heusner failed to demonstrate he did not have an adequate remedy with which to challenge his conviction. *See* NRS 34.170. We therefore conclude the district court did not err by denying the petition.

Postconviction Petition for a Writ of Habeas Corpus

Heusner filed his petition nearly eight years after issuance of the remittitur on direct appeal on May 28, 2010. *See Heusner v. State*, Docket No. 52023 (Order of Affirmance, May 3, 2010). Heusner’s petition was therefore untimely filed. *See* NRS 34.726(1). Heusner’s petition was also successive insofar as he could have raised his claims on appeal or in a previous petition, and an abuse of the writ insofar as his claims are new and different from those raised previously.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Heusner’s petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS

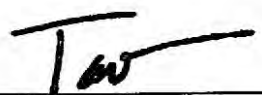
¹*Heusner v. State*, Docket No. 70381-COA (Order of Affirmance, January 19, 2017); *Heusner v. State*, Docket No. 62055 (Order of Affirmance, November 14, 2013).

34.810(1)(b); NRS 34.810(3), or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Heusner did not allege he had good cause to excuse the procedural bars. Rather, he contended he was actually innocent because the creation of the statute revision commission violated the separation of powers doctrine and, as a result, the Nevada Revised Statutes are unconstitutional and the district court lacked jurisdiction to convict him. First, Heusner did not demonstrate actual innocence because his claim was of mere legal insufficiency and not of factual innocence. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). Second, Heusner's claim did not implicate the jurisdiction of the courts. *See Nev. Const. art. 6; § 6; NRS 171.010*. And finally, Heusner's claim that the separation of powers doctrine was violated lacked merit for the reasons discussed previously. Heusner failed to demonstrate he was actually innocent, and we therefore conclude the district court did not err by denying Heusner's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Allen Stanislaus Heusner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk