

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRETT DAGAN JONES,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND BRIAN  
WILLIAMS, WARDEN,  
Respondents.

No. 86715-COA

FILED

JAN 12 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Brett Dagan Jones appeals from an order of the district court denying a “writ of habeas corpus pursuant to NRS 34.360 et. seq.” filed on March 23, 2023.<sup>1</sup> Eighth Judicial District Court, Clark County; Jennifer Schwartz, District Judge.

Jones filed his petition more than 20 years after entry of the judgment of conviction on January 24, 2003.<sup>2</sup> Thus, Jones’ petition was untimely filed. See NRS 34.726(1). Moreover, Jones’ petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and different from those raised in

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<sup>1</sup>Because Jones’ pleading challenged the validity of his judgment of conviction, the district court properly treated it as a postconviction petition for a writ of habeas corpus and applied the mandatory procedural bars. See NRS 34.724(2)(b); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

<sup>2</sup>Jones did not pursue a direct appeal.

his previous petitions.<sup>3</sup> NRS 34.810(3).<sup>4</sup> Jones' petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4). Further, because the State specifically pleaded laches, Jones was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Jones appeared to argue he had good cause or that the procedural bars should otherwise not apply because the sentencing court lacked subject matter jurisdiction. Specifically, Jones argued the sentencing court did not have authority to sentence him or enter a judgment of conviction because it exceeded its authority when it allowed the filing of a second amended information and a plea agreement after the jury had reached a verdict. Jones has previously alleged that the sentencing court lacked jurisdiction because only the jury had statutory authority to sentence him, and this court concluded that this claim did not implicate the jurisdiction of the courts. See *Jones v. State*, No. 82099-COA, 2021 WL 2350049 (Nev. Ct. App. Jun. 8, 2021) (Order of Affirmance). That determination is the law of the case, which "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

As a separate and independent ground to deny relief, we conclude that Jones' challenge to the sentencing court's authority was reasonably available to be raised in a timely petition, and he did not

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<sup>3</sup>*Jones v. State*, No. 75120, 2018 WL 3913428 (Nev. Ct. App. July 31, 2018) (Order of Affirmance); *Jones v. State*, No. 54312, 2010 WL 3504144 (Nev. May 10, 2010) (Order of Affirmance); *Jones v. State*, Docket No. 41510 (Order of Affirmance, March 18, 2004).

<sup>4</sup>The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. See A.B. 49, 82d Leg. (Nev. 2023).

demonstrate an impediment external to the defense prevented him from doing so. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *see also Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available). For these reasons, we conclude that Jones is not entitled to relief on this claim. Further, Jones did not overcome the presumption of prejudice to the State. *See NRS 34.800(2)*. For the foregoing reasons, we conclude the district court did not err by denying the petition as procedurally barred.

Jones raises for the first time on appeal several claims alleging he can overcome the procedural bars. We decline to consider these claims in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Finally, Jones argues the district court erred by declining to conduct an evidentiary hearing. Because Jones failed to overcome the procedural bars, we conclude the district court did not err by denying his claims without conducting an evidentiary hearing. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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



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



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

cc: Hon. Jennifer Schwartz, District Judge  
Brett Dagan Jones  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk