

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAILONI DEANDRE MORRISON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76801-COA

**FILED**

**JUN 19 2019**

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

*ORDER OF AFFIRMANCE*

Lailoni Deandre Morrison appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 8, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Morrison filed his petition more than 13 years after issuance of the remittitur on direct appeal on June 29, 2004. *See Morrison v. State*, Docket No. 40097 (Order of Affirmance, June 3, 2004). Morrison's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive and an abuse of the writ.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Morrison's petition was therefore procedurally barred absent a

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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>*See Morrison v. Warden*, Docket No. 70618 (Order of Affirmance, June 14, 2017); *Morrison v. State*, Docket No. 44745 (Order of Affirmance, May 19, 2005).

demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3), or a fundamental miscarriage of justice, *see Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev., Adv. Op. 53 \*22 n.12, 423 P.3d 1084, 1097 n.12 (2018).

Morrison claimed the holdings in *Welch v. United States*, 578 U.S. \_\_\_, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S. Ct. 718 (2016), provided good cause to overcome the procedural bars. To demonstrate good cause, “a petitioner must show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 251, 271 P.3d 503, 506 (2003). Further, the claim of good cause must be raised within a reasonable time. *Id.* at 251, 71 P.3d at 505. One year provides sufficient time to present a claim that was not factually or legally available at the time of the procedural default. *Rippo*, 134 Nev., Adv. Op. 53 \*19-20, 423 P.3d at 1097.

Morrison’s petition was filed more than one year after *Welch* and *Montgomery* were decided, and accordingly, his good-cause argument was not raised within a reasonable time. Morrison claimed he was delayed in raising the good-cause argument because he did not learn of the new cases until August 2017. Morrison’s purported lack of legal knowledge was not an impediment external to the defense that prevented him from complying with the procedural bars. *Cf. Phelps v. Dir., Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner’s claim of organic brain damage, borderline mental retardation, and reliance on


assistance of an inmate law clerk unschooled in the law did not constitute good cause for filing a successive postconviction petition). Morrison acknowledged the case was available in the prison law library beginning in August 2016, also well over a year before he filed the instant petition.


Moreover, as a separate and independent ground to deny relief, *Welch* and *Montgomery* are inapplicable to Morrison's underlying substantive claim. Morrison claimed he was entitled to the retroactive application of the 2007 amendments to NRS 193.165. *Welch* and *Montgomery* address situations in which a court interpreted a statute or made a constitutional determination. See *Welch*, 578 U.S. at \_\_\_, 136 S. Ct. at 1264-65; *Montgomery*, 577 U.S. at \_\_\_, 136 S. Ct. at 726. The Legislature's changes to NRS 193.165 were not the result of a court decision and were not of constitutional dimension. See *State v. Second Judicial Dist. Court*, 124 Nev. 564, 565-66, 571, 188 P.3d 1079, 1080, 1084 (2008). Accordingly, *Welch* and *Montgomery* would not provide good cause to reach Morrison's underlying claim.

Morrison also attempted to overcome the procedural bars by arguing he would suffer a fundamental miscarriage of justice. Such a claim can overcome the procedural bars only if a petitioner demonstrates he is actually innocent of the crime. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Morrison did not demonstrate actual innocence because his bare claim failed to show "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537 (2001). We therefore

conclude the district court did not err by denying Morrison's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Lailoni Deandre Morrison  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk