

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM ROHWEDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63596

**FILED**

JAN 15 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on March 7, 2013, nearly 19 years after entry of the judgment of conviction on April 13, 1994.<sup>2</sup> Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>3</sup> *See* NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>No direct appeal was taken.

<sup>3</sup>*Rohweder v. State*, Docket No. 27617 (Order Dismissing Appeal, March 2, 2000).

prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

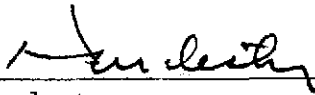
Appellant claimed that he had good cause based on the Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), which held that juveniles who commit non-homicide crimes cannot receive a sentence of life without the possibility of parole. *Graham*, 560 U.S. at 82. Appellant failed to demonstrate good cause because *Graham* does not apply to him. While appellant was a juvenile when he committed his crime, he committed homicide, and therefore, *Graham* does not apply. Further, appellant filed his petition nearly three years after *Graham* was decided on May 17, 2010, and appellant failed to demonstrate good cause for the entire length of the delay.

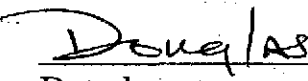
Next, appellant claimed he had good cause based on *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012), which held that juveniles that are convicted of homicide cannot receive a mandatory life-without-the-possibility-of-parole sentence. Instead, the sentencing body must have discretion. *Id.* at \_\_\_, 132 S. Ct. at 2475. Appellant failed to demonstrate good cause because *Miller* does not apply. In Nevada, the decision of whether to impose a sentence of life without the possibility of parole is discretionary, see 1989 Nev. Stat., ch. 408, § 1, at 865 (setting forth the potential penalties for first-degree murder in 1994 as death, life without the possibility of parole, or life with the possibility of parole after 10 years), and therefore, appellant's sentence does not run afoul of *Miller*. To the extent that appellant argues that the sentencing court failed to take his age into consideration at sentencing, and therefore violated *Miller*, this claim is belied by the record. Trial counsel provided the district court with

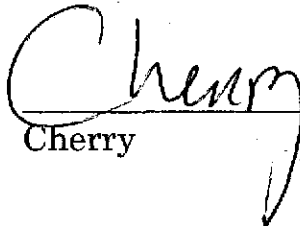
a sentencing memorandum and provided argument regarding appellant's age at the time of the crime. Further, the district court made it clear that it considered appellant's age but found that the heinousness of the crime outweighed the mitigation of age.

To the extent that appellant relies on *Simmons v. Roper*, 543 U.S. 551 (2005), appellant's reliance is misplaced. *Roper* abolished the death penalty for juveniles. Because appellant did not receive the death penalty, *Roper* does not apply. Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Elissa F. Cadish, District Judge  
William Rohweder  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk