

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL GARVIN COOPER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70558

**FILED**

APR 14 2017

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge. The district court denied appellant's petition as procedurally barred. We affirm.

Appellant filed his petition on December 22, 2015, more than 26 years after remittitur issued from his direct appeal on April 18, 1989. *Cooper v. State*, Docket No. 18846 (Order Dismissing Appeal, March 30, 1989). Thus, the petition was untimely filed. See NRS 34.726(1). The petition also constituted an abuse of the writ because appellant had previously sought postconviction relief<sup>1</sup> and the petition raised a claim new and different from those previously raised. See NRS 34.810(2); NRS 34.810(2)(1)(B)(2). Accordingly, the petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b), (3). Further, because the State specifically pleaded

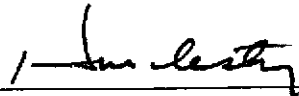
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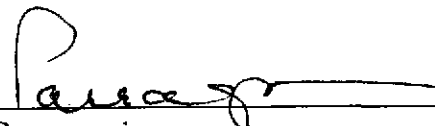
<sup>1</sup>*Cooper v. State*, Docket No. 21315 (Order Dismissing Appeal, September 14, 1990); *Cooper v. State*, Docket No. 28847 (Order Dismissing Appeal, August 7, 1998).


laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

The district court concluded that appellant failed to demonstrate good cause and prejudice. We agree. See *Leavitt v. State*, 132 Nev., Adv. Op. 83, 386 P.3d 620, 620-21 (2016) (disagreeing with the interpretation of Nevada law set forth in *Riley v. McDaniel*, 786 F.3d 719, 721 (9th Cir. 2015), and concluding that *Riley* does not establish good cause for an untimely petition). We also agree that appellant failed to overcome the presumption of prejudice to the State for purposes of NRS 34.800. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Eric Johnson, District Judge  
Samuel Garvin Cooper  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk