

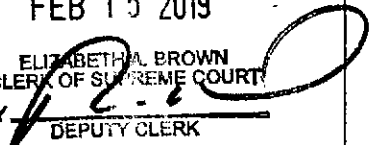
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MALCOLM GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75482-COA

FILED

FEB 15 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Malcolm Gray appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Gray filed his petition on December 7, 2017, almost 20 years after issuance of the remittitur on direct appeal on January 21, 1998. *Gray v. State*, Docket No. 28156 (Order Dismissing Appeal, December 30, 1997). Thus, Gray's petition was untimely filed. *See* NRS 34.726(1). Moreover, Gray's petition was successive because he had previously filed several postconviction petitions 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 petitions.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Gray's petition was procedurally barred absent a demonstration of good cause and

¹This 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).

²*Gray v. State*, Docket No. 50006 (Order of Affirmance, December 10, 2007); *Gray v. State*, Docket No. 46862 (Order of Affirmance, July 5, 2006); *Gray v. State*, Docket No. 39346 (Order of Affirmance, September 3, 2003).

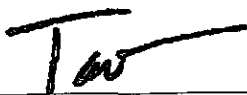
actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Gray was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Gray appeared to claim that he had good cause because he recently discovered his record contained improper information regarding whether the victim was pregnant when she died. However, Gray's claim did not provide good cause because he did not demonstrate an impediment external to the defense prevented him from raising this claim at an earlier time. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

In addition, Gray failed to overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, the district court properly denied the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Malcolm Gray
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk