

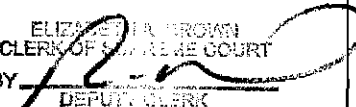
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUEL SALVA MERCADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74513-COA

FILED

MAR 29 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ruel Salva Mercado appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 18, 2017. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Mercado filed his petition nearly 19 years after issuance of the remittitur on direct appeal on April 28, 1998. *See Mercado v. State*, Docket No. 27877 (Order Dismissing Appeal, April 9, 1998).¹ Mercado's petition was therefore untimely filed. *See* NRS 34.726(1). Mercado's petition was also successive.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Mercado's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Mercado


¹An amended judgment of conviction was filed on January 10, 2006. Mercado did not appeal from the amended judgment of conviction. Further, none of the claims raised in Mercado's petition were relevant to those changes. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).


²*See Mercado v. State*, Docket No. 45584 (Order of Affirmance, September 29, 2006); *Mercado v. State*, Docket No. 35006 (Order of Affirmance in Part and Reversal and Remand in Part, June 3, 2002).


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

Mercado claimed the decisions 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 excuse the procedural bars to his claim that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). We conclude the district court did not err by concluding the cases did not provide good cause to overcome the procedural bars. See *Branham v. Warden*, 134 Nev. ___, ___, 434 P.3d 313, 316 (Ct. App. 2018). Further, Mercado failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk