

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES KELLY CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74554-COA

FILED

MAR 20 2019

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

ORDER OF AFFIRMANCE

Charles Kelly Chavez 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.

Chavez filed his petition 19 years after entry of the judgment of conviction on April 14, 1998.¹ Chavez' petition was therefore untimely filed. *See* NRS 34.726(1). Chavez' petition was also successive.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Chavez' 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, Chavez was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

¹Chavez did not appeal his conviction.

²*See Chavez v. State*, Docket No. 60741 (Order of Affirmance, December 12, 2012); *Chavez v. State*, Docket No. 44023 (Order of Affirmance, June 29, 2005); *Chavez v. State*, Docket No. 37759 (Order of Affirmance, February 4, 2003). Chavez does not appear to have appealed from the denial of a postconviction petition for a writ of habeas corpus filed on August 24, 2015.

Chavez 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, Chavez 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.



Tao

J.



Gibbons

J.



Bulla

J.

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