


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY LEE HINES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75979-COA

**FILED**

APR 18 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Terry Lee Hines appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 10, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Hines filed his petition more than 27 years after issuance of the remittitur on direct appeal on March 13, 1990, *see Hines v. State*, Docket No. 19926 (Order Dismissing Appeal, February 20, 1990), and more than 24 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. \_\_\_, \_\_\_ n.12, 423 P.3d 1084, 1097 n.12 (2018). Hines' petition was therefore untimely filed. *See* NRS 34.726(1). Hines' petition was also successive.<sup>2</sup> *See* NRS 34.810(1)(b)(2). Hines' petition was therefore procedurally barred

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

<sup>2</sup>*See Hines v. State*, Docket No. 26164 (Order Dismissing Appeal, March 10, 1998); *Hines v. State*, Docket No. 22248 (Order Dismissing Appeal, June 26, 1991).


absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b). Further, because the State specifically pleaded laches, Hines was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).


Hines 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 overcome 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). A claim of good cause must be raised within a reasonable time, *Hathaway v. State*, 119 Nev. 248, 251, 71 P.3d 503, 505 (2003), but Hines' petition was filed more than one year from when *Welch* and *Montgomery* were decided. Hines offered no explanation for this delay and thus failed to demonstrate good cause. Moreover, as a separate and independent ground to deny relief, *Welch* and *Montgomery* would not have provided good cause to overcome the procedural bars. See *Branham v. Warden*, 134 Nev. \_\_\_, \_\_\_, 434 P.3d 313, 316 (Ct. App. 2018).

Hines also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars. A petitioner may overcome procedural bars by demonstrating he is actually innocent such that the failure to consider his petition would result in a fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Hines claimed that “[t]he facts in this case established that [he] only committed a second-degree murder.” This is not actual innocence, and Hines thus failed to overcome the procedural bars. See *Bousley v. United States*, 523 U.S. 614, 623 (1998) (“[A]ctual innocence’ means factual innocence, not mere legal insufficiency.”). And because he failed to demonstrate a fundamental

miscarriage of justice, Hines failed to overcome the presumption of prejudice to the State. See NRS 34.800. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen E. Delaney, District Judge  
Terry Lee Hines  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).