

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT LINZY BELLON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76755-COA

**FILED**

APR 18 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Robert Linzy Bellon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Bellon filed his petition on June 5, 2018, more than ten years after issuance of the remittitur on direct appeal on February 19, 2008. *Bellon v. State*, Docket No. 47798 (Order of Affirmance, October 17, 2008). Thus, Bellon's petition was untimely filed. *See* NRS 34.726(1). Moreover, Bellon's petition was successive because he had previously filed two 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

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3). We have reviewed all documents Bellon has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Bellon has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

his previous petitions.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Bellon's petition was 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). Moreover, because the State specifically pleaded laches, Bellon was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

First, Bellon claimed he had good cause based upon application of *Graham v. Florida*, 560 U.S. 48 (2010), and *State v. Boston*, 131 Nev. 981, 363 P.3d 453 (2015). 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 Bellon's petition was filed more than one year after these cases were decided. Bellon offered no explanation for his delay and thus failed to demonstrate good cause. Moreover, these opinions did not apply to Bellon's case because they discuss and apply sentencing rules for juveniles convicted of non-homicide offenses, *Graham*, 560 U.S. at 74; *Boston*, 131 Nev. at 988-89, 363 P.3d at 458, and Bellon was convicted of first-degree murder with the use of a deadly weapon. Therefore, Bellon did not demonstrate good cause to overcome the procedural bars.

Second, Bellon claimed he had good cause based upon application of *Miller v. Alabama*, where the U.S. Supreme Court determined the Eighth Amendment barred mandatory life-without-parole sentences for juvenile offenders. 567 U.S. 460, 479-80 (2012). Again, Bellon raised this claim more than one year after this case was decided and he offered no explanation for his delay. Thus, Bellon failed to demonstrate

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<sup>2</sup>*Bellon v. State*, Docket No. 61913 (Order of Affirmance, January 16, 2014); *Bellon v. State*, Docket No. 57223 (Order of Affirmance, April 11, 2012).

good cause to overcome the procedural bars. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506. Moreover, Bellon did not face a mandatory life-without-parole-sentence, *see* 1995 Nev. Stat., ch. 168, § 1, at 257 (former NRS 200.030); 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165), and, therefore, the *Miller* decision had no application to Bellon's case. Therefore, Bellon did not demonstrate good cause to overcome the procedural bars.

Third, Bellon appeared to claim federal equitable tolling standards should excuse the procedural bars. However, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 "requires a petitioner to demonstrate a legal excuse for any delay in filing a petition." *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 874 (2014). Therefore, Bellon did not demonstrate good cause to overcome the procedural bars.


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


Next, Bellon appears to argue the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, that if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Bellon's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper.

Therefore, the district court properly denied the petition without conducting an evidentiary hearing.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Robert Linzy Bellon  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>Bellon also argued he was entitled to a parole hearing pursuant to NRS 213.12135(1), but the Nevada Department of Corrections has improperly calculated his parole hearing date. This claim challenged the computation of time served and cannot be raised in a postconviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. See NRS 34.738(3). However, the denial of this claim would be without prejudice, allowing Bellon to properly and separately file a postconviction petition for a writ of habeas corpus challenging the computation of time served in the county in which he is incarcerated. See NRS 34.724(1); NRS 34.730(2); NRS 34.738(1).