

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR JOSEPH BREWER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76865-COA

**FILED**

MAY 17 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Arthur Joseph Brewer appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on June 6, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Brewer's petition was untimely because it was filed more than eleven years after the remittitur on direct appeal was issued on April 5, 2007,<sup>2</sup> *see* NRS 34.726(1), and it was successive because he had previously filed two postconviction petitions for a writ of habeas corpus and the first one was decided on the merits,<sup>3</sup> *see* NRS 34.810(2). Therefore, his petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). Moreover, because the State

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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 Brewer v. State*, Docket No. 48014 (Order of Affirmance, March 6, 2007).


<sup>3</sup>*See Brewer v. State*, Docket No. 62643 (Order of Affirmance, September 16, 2014); *Brewer v. State*, Docket No. 50377 (Order of Affirmance, August 12, 2008).


specifically pleaded laches, Brewer was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Brewer claimed his petition was not untimely because it was filed pursuant NRS 34.360; it was not successive because the basis for his claim was not known to him before the Nevada Supreme Court decided *Williams v. State Department of Corrections*, 133 Nev. 594, 402 P.3d 1260 (2017); and it was not barred by laches because the State failed to identify how it would be prejudiced. However, Brewer's petition requested relief from his judgment of conviction and sentence; therefore, it was a postconviction petition for a writ of habeas corpus and was subject to the provisions of NRS 34.720 through NRS 34.830. See NRS 34.720(1); NRS 34.724(2)(b). Brewer has not demonstrated that his challenge to the constitutionality of NRS 207.010 was not reasonably available before *Williams* was decided. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). And Brewer, and not the State, had the burden of overcoming the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

We conclude Brewer failed to demonstrate good cause or a fundamental miscarriage of justice sufficient to excuse the procedural bars to his petition and the State's specific plea of laches. Accordingly, the district court did not err by dismissing his procedurally barred petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Arthur Joseph Brewer  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk