IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONOR JAMES HARRIS,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 77468-COA

FILED

MAY 31 2019

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

ORDER OF AFFIRMANCE

Conor James Harris appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.[1] Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Harris filed his petition on August 16, 2018, more than 20 years after entry of the judgment of conviction on September 23, 1997.[2] Thus, Harris' petition was untimely filed. *See* NRS 34.726(1). Harris' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Moreover, because the State specifically pleaded laches, Harris was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Harris claimed he had good cause due to lack of legal materials and reliance upon inmate law clerks. However, these issues did not constitute an impediment external to the defense that prevented Harris from filing a timely petition. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104

[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

[2]Harris did not pursue a direct appeal.

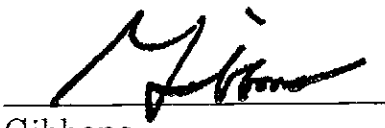
Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition). Therefore, Harris did not demonstrate good cause to overcome the procedural bars.

Second, Harris claimed he had good cause based upon cases that applied *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). Harris acknowledged he was older than 18 when he committed the offense, but asserted he should receive the benefit of changes to juvenile sentencing because his brain was not fully developed when he committed the offense. Harris raised this claim more than one year after *Miller* was decided and he did not demonstrate an impediment external to the defense prevented him from raising this claim. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Moreover, Harris 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, thus, the *Miller* decision and its progeny had no application to Harris' case. Therefore, Harris did not demonstrate good cause to overcome the procedural bars.

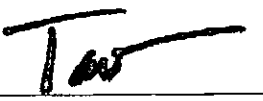
Harris also failed to overcome the presumption of prejudice to the State because he did not demonstrate he suffered from a fundamental miscarriage of justice. *See* NRS 34.800(1)(b), (2). Therefore, we conclude

the district court did not err by dismissing the petition as procedurally barred.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Conor James Harris
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[3]The district court also dismissed Harris' petition as procedurally barred pursuant to NRS 34.810(2). However, Harris' earlier-filed motion to withdraw guilty plea was not construed as a postconviction petition and the instant petition was his first postconviction petition. Therefore, the district court erred by concluding the instant petition was procedurally barred pursuant to NRS 34.810(2). We nevertheless affirm the district court's decision for the reason stated above. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

[4]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).