

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH EDWARD KOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71915

FILED

OCT 11 2017

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

ORDER OF AFFIRMANCE

Joseph Edward Koza appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Koza filed his petition on August 19, 2016, more than 31 years after issuance of the remittitur on direct appeal on April 12, 1985. *Koza v. State*, 100 Nev. 245, 681 P.2d 44 (1984). Thus, Koza's petition was untimely filed.² See NRS 34.726(1). Koza's 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, Koza was

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²Koza's petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).


required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

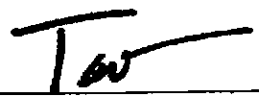
Koza first claimed *Riley v. McDaniel*, 786 F.3d 719 (9th Cir. 2015) provided good cause to raise a claim asserting the jury received the flawed *Kazalyn* instruction regarding the elements of first-degree murder. See *Kazalyn v. State*, 108 Nev. 67, 75, 825 P.2d 578, 583 (1992), *receded from by Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713-14 (2000). The district court properly denied relief because the Nevada Supreme Court disagreed with the interpretation of Nevada law set forth in *Riley* and concluded *Riley* did not establish good cause for filing an untimely petition. See *Leavitt v. State*, 132 Nev. ___, ___, 386 P.3d 620, 620-21 (2016).

Second, Koza claimed an unpublished decision by the Nevada Supreme Court, *Cardoza v. State*, Docket No. 66463 (Order Affirming in Part, Reversing in Part and Remanding, April 14, 2016), provided good cause to raise his claim regarding the *Kazalyn* instruction. Koza's reliance upon the *Cardoza* decision was misplaced because that decision did not announce any new propositions, but rather discussed and applied decisions previously entered. Specifically, the *Cardoza* decision discussed and applied the Nevada Supreme Court's decision in *Byford v. State*, 116 Nev. at 265, 994 P.2d at 713-14 regarding the use of the *Kazalyn* instruction. Koza filed his petition approximately 16 years after the Nevada Supreme Court issued the *Byford* decision, and Koza did not demonstrate an impediment external to the defense excused such a delay. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, the district court properly concluded Koza did not demonstrate cause to excuse the delay.

Finally, Koza did not overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, we conclude the district court properly denied the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Joseph Edward Koza
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk