

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRIS TREMEL TAILOR, A/K/A
DARRIS TREMEL TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71922

FILED

OCT 12 2017

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

ORDER OF AFFIRMANCE

Darris Tremel Tailor appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on August 4, 2016.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Tailor filed his petition nearly 14 years after issuance of the remittitur on direct appeal on November 8, 2002. *Taylor v. State*, Docket No. 36653 (Order of Affirmance, August 21, 2002). Thus, Tailor's petition was untimely filed. *See* NRS 34.726(1). Moreover, Tailor's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised

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

claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Tailor'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, Tailor was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


In his petition below, Tailor claimed he had good cause to raise his claim regarding the premeditation instruction given at his trial because of the decisions in *Riley v. State*, 786 F.3d 719 (9th Cir. 2015) and *Cardoza v. State*, Docket No. 66463 (Order Affirming in Part, Reversing in Part, and Remanding, April 14, 2016). The district court found Tailor failed to demonstrate good cause to overcome the procedural bars and failed to overcome the rebuttable presumption of prejudice to the State. The district court then denied the petition.

On appeal, Tailor does not challenge the district court's reasons for denying his petition. Instead, Tailor raises a new good cause claim arguing the United States Supreme Court has altered the retroactivity rules and this new caselaw provides him good cause. We decline to consider Tailor's new good cause claim on appeal because he did not raise it in his petition filed below. See *McNelton v. State*, 115 Nev.

²*Taylor v. State*, Docket Nos. 45911, 46190 (Order of Affirmance, November 22, 2006).

396, 416, 990 P.2d 1263, 1276 (1999). Further, we conclude the district court did not err by denying the petition as procedurally barred.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Darris Tremel Tailor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We also conclude the district court did not abuse its discretion by denying Tailor's motion for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

⁴The Honorable Abbi Silver did not participate in the decision in this matter.