

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAILONI DEANDRE MORRISON,
Appellant,
vs.
BRIAN E. WILLIAMS, WARDEN,
Respondent.

No. 70618

FILED

JUN 14 2017

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF THE COURT
BY *M. Wilcox*
DEPUTY CLERK

Lailoni Deandre Morrison appeals from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Morrison claims the district court erred by denying his petition as procedurally barred. Morrison filed his petition on March 3, 2016, more than 11 years after issuance of the remittitur on direct appeal on June 29, 2004. *See Morrison v. State*, Docket No. 40097 (Order of Affirmance, June 3, 2004). Thus, Morrison's petition was untimely filed. *See* NRS 34.726(1). Moreover, Morrison'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 claims new and

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

different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Morrison'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).

Morrison argued he had good cause to overcome the procedural bars because he was filing the petition as soon as possible after a significant substantive change in the law. The district court concluded Morrison's reliance on the decision in *Riley v. McDaniel*, 786 F.3d 719 (9th Cir. 2015) did not constitute good cause because unlike at Riley's trial, at Morrison's trial Morrison received the benefit of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000) with regard to the instructions for first-degree murder and the *Kazalyn*³ instruction was not provided to the jury. The district court further found *Riley* would not provide good cause to overcome the procedural bars because Morrison was convicted of second-degree murder with the use of a deadly weapon, not first-degree murder.


We conclude the district court correctly determined the holding in *Riley* does not apply to Morrison and Morrison did not demonstrate good cause to overcome the procedural bars. Further, the Nevada Supreme Court has recently disagreed with the interpretation of Nevada law set forth in *Riley* and concluded *Riley* does not establish good cause for filing an untimely petition. *Leavitt v. State*, 132 Nev. ___, ___,


²See *Morrison v. State*, Docket No. 44745 (Order of Affirmance, May 19, 2005).


³*Kazalyn v. State*, 108 Nev. 67, 825 P.2d 578 (1992).

386 P.3d 620, 620-21 (2016). Accordingly, we conclude the district court did not err by denying Morrison's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Lailoni Deandre Morrison
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴Because we conclude the district court did not err by denying the petition as procedurally barred, we need not reach the remaining claims raised on appeal.