

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY LYN EMIL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73461

**FILED**

SEP 13 2019

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

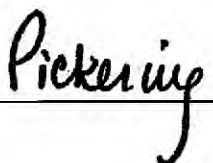
Appellant filed his petition on January 11, 2017, more than one year after the remittitur issued on appeal from the judgment of conviction. *Emil v. State*, 105 Nev. 858, 784 P.2d 956 (1989). The petition was therefore untimely filed. See NRS 34.726(1). Moreover, because appellant previously sought postconviction relief,<sup>1</sup> the petition was successive to the extent it raised claims that were previously litigated and resolved on their merits, and it constituted an abuse of the writ to the extent it raised new claims. See NRS 34.810(2). Finally, because the State pleaded laches, appellant had to overcome the presumption of prejudice to the State. See NRS 34.800(2). Accordingly, the petition was procedurally barred absent a demonstration of good cause and actual prejudice, NRS 34.726(1); NRS 34.810(3), or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice, *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).


<sup>1</sup>See, e.g., *Emil v. State*, Docket No. 21663 (Order of Affirmance, June 27, 1991).

Appellant argues that he demonstrated good cause and prejudice sufficient to excuse the procedural bars because *Hurst v. Florida*, 136 S. Ct. 616 (2016), set forth a new retroactive rule that requires trial courts to instruct jurors that the State must prove that the aggravating circumstances are not outweighed by the mitigating circumstances beyond a reasonable doubt. We disagree. See *Castillo v. State*, 135 Nev., Adv. Op. 16, 442 P.3d 558 (2019) (discussing death-eligibility in Nevada and rejecting the argument that *Hurst* announced new law relevant to the weighing component of Nevada's death penalty procedures); *Jeremias v. State*, 134 Nev. 46, 57-59, 412 P.3d 43, 53-54 (same), cert. denied, 139 S. Ct. 415 (2018). Accordingly, we


ORDER the judgment of the district court AFFIRMED.

  
Gibbons C.J.

  
Pickering, J.

  
Hardesty, J.

  
Parraguirre, J.

  
Stiglich, J.

  
Cadish, J.

  
Silver, J.

cc: Hon. Douglas W. Herndon, District Judge  
Federal Public Defender/Central Dist. of CA.  
Joel M. Mann, Chtd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk