

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENDRICK JAMES COLLIER, A/K/A
KENDRICK JAMEL COLLIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70095

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Kendrick James Collier appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on January 5, 2016 and the supplement to the petition filed on January 19, 2016.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Collier asserts the district court erred by denying his petition. Collier filed his petition more than 15 years after issuance of the remittitur on direct appeal on September 6, 2000.² Thus, Collier's petition was untimely filed. *See* NRS 34.726(1). Moreover, Collier'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).

²*See Collier v. State*, Docket No. 33311 (Order Dismissing Appeal, August 11, 2000).

claims new and different from those raised in his previous petition.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Collier'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, Collier was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Collier argued he had good cause to excuse the procedural defects because substantive rules must have retroactive effect and he was relying on new cases that were decided after his first petition was filed and denied. Specifically, Collier relied on the holding in *Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002), to challenge his murder conviction based on a theory of aiding and abetting. And he relied on the recent holding in *Riley v. McDaniel*, 786 F.3d 719 (9th Cir. 2015), to challenge the definition of premeditation that was given at his trial.

The district court found Collier failed to demonstrate good cause and prejudice to overcome the procedural bars and he failed to overcome the presumption of prejudice to the State. The district court specifically found the holding in *Riley* did not apply to Collier because he was convicted in 1996.

We conclude the district court did not err by finding Collier failed to demonstrate good cause to overcome the procedural bars. Even assuming the holding in *Sharma* applies to Collier's case, *Sharma* was decided in 2002 and Collier did not demonstrate good cause for the entire length of his delay in raising this claim. Further, the district court

³See *Collier v. State*, Docket No. 38874 (Order of Affirmance, October 18, 2002).

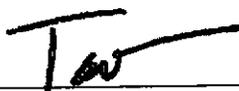
correctly determined the holding in *Riley* does not apply to Collier and, therefore, *Riley* did not constitute good cause to overcome the procedural bars.⁴

Collier also appeared to assert he could overcome the procedural bars because he was actually innocent. The district court determined Collier failed to meet the narrow standard identified under *Calderon v. Thompson*, 523 U.S. 538, 559 (1998), for proving actual innocence to reach procedurally-barred constitutional claims of error because he did not present any new evidence. We conclude the district court did not err.

Accordingly, we conclude the district court did not err by denying Collier's postconviction petition for a writ of habeas corpus as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁴Even if the holding in *Riley* would have applied to Collier's case, the Nevada Supreme Court has held it does not agree with the holding in *Riley* and *Riley* does not constitute good cause to overcome the procedural bars. See *Leavitt v. State*, 132 Nev. ___, 386 P.3d 620 (2016).

cc: Hon. Kathleen E. Delaney, District Judge
Kendrick James Collier
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk