

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC ANTHONY MCJOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70136

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Marc Anthony McJoy appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on November 9, 2015.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

McJoy did not pursue a direct appeal and his habeas petition was filed more than eleven years after entry of the judgment of conviction on September 8, 2004; consequently, his petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). Moreover, because the State specifically pleaded laches, McJoy was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

In an attempt to overcome the procedural bars to his petition, McJoy argued defense counsel did not advise him on how to challenge his case on the merits, he was denied the opportunity to be evaluated as a

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).


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juvenile under NRS 62B.390(3)(b), and nothing in the record demonstrates he filed the petition to intentionally prejudice the State.


We conclude McJoy has not demonstrated an impediment external to the defense prevented him from raising his grounds for relief in a timely habeas petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To the extent McJoy claims one of his grounds for relief is based on a change in the law, we note NRS 62B.390(3)(b) was last amended in 2009, *see Nev. Stat., ch. 69, § 1, at 239*, and it does not apply to McJoy because he was charged with attempted murder, *see NRS 62B.330(3)(a)*. Finally, McJoy's claim that he did not inappropriately delay the case is belied by the record, which demonstrates his grounds for relief were previously available and could have been raised in a timely petition. *See State v. Powell*, 122 Nev. 751, 758-59, 138 P.2d 453, 458 (2006).

Accordingly, we conclude the district court did not err in dismissing McJoy's habeas petition without appointing counsel or conducting an evidentiary hearing, *see NRS 34.750(1); NRS 34.770(2)*, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Marc Anthony McJoy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk