

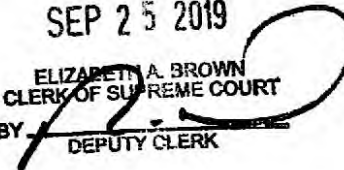
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES LAMONT MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77803-COA

**FILED**

SEP 25 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James Lamont Moore appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 12, 2018. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Moore filed his petition more than 18 years after issuance of the remittitur on direct appeal on April 5, 2000. *See Moore v. State*, 116 Nev. 302, 997 P.3d 793 (2000). Moore's petition was therefore untimely filed. *See NRS 34.726(1)*. And because he had previously litigated a postconviction habeas petition on the merits, his petition was also successive.<sup>1</sup> *See NRS 34.810(2)*. Moore's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See NRS 34.726(1)*; *NRS*

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<sup>1</sup>*See Moore v. State*, Docket No. 39387 (Order of Affirmance, November 20, 2002); *see also Moore v. State*, Docket No. 74553 (Order of Affirmance, January 24, 2019); *Moore v. State*, Docket No. 64170 (Order of Affirmance, April 10, 2014); *Moore v. State*, Docket No. 57969 (Order of Affirmance, July 13, 2011); *Moore v. State*, Docket No. 56259 (Order of Affirmance, December 9, 2010); *Moore v. State*, Docket No. 52856 (Order of Affirmance, February 4, 2010). Moore also filed a postconviction petition for a writ of habeas corpus on February 10, 2012, but he did not appeal the district court's denial of that petition.

34.810(3). Further, because the State specifically pleaded laches, Moore was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Moore claimed the decision in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), provided good cause to overcome the procedural bars to his claim that trial counsel was ineffective for conceding Moore's guilt at trial. In *McCoy*, the United States Supreme Court held, "When a client expressly asserts that the objective of his defence is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." *Id.* at 1509 (internal quotation marks, emphasis omitted).

Even assuming, without deciding, that *McCoy's* holding is new constitutional law that must be applied retroactively and is thus good cause, Moore could not demonstrate actual prejudice. Unlike the petitioner in *McCoy*, Moore conceded on the record that he agreed with counsel's trial strategy, in light of his confession to the police, to admit his guilt to felony murder in the hopes of gaining credibility with the jury to avoid a death sentence in the penalty phase of the trial. Further, Moore failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). We therefore conclude the district court did not err by denying Moore's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District  
James Lamont Moore  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk