


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS RENE GONZALEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77834-COA

**FILED**

SEP 25 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jesus Rene Gonzalez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 16, 2018. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Gonzalez' petition was untimely because it was filed more than ten years after entry of the judgment of conviction on March 25, 2008,<sup>1</sup> see 34.726(1), and it was successive because he had previously filed three postconviction petitions for a writ of habeas corpus and the first petition was decided on the merits,<sup>2</sup> see NRS 34.810(2). Consequently, his petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Gonzalez claimed he was entitled to have the 2007 amendments to NRS 193.165 applied retroactively to his sentence and argued the United States Supreme Court's recent decisions in *Welch v. United States*, 578 U.S.

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<sup>1</sup>Gonzalez did not pursue a direct appeal.

<sup>2</sup>See *Gonzalez v. State*, Docket No. 61276 (Order of Affirmance, December 17, 2013).

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\_\_\_, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S. Ct. 718 (2016), provided good cause to overcome the procedural bars to his petition.

However, *Welch* and *Montgomery* addressed situations where a court interpreted a statute or made a constitutional determination, *Welch*, 578 U.S. at \_\_\_, 136 S. Ct. at 1264-65; *Montgomery*, 577 U.S. at \_\_\_, 136 S. Ct. at 726, whereas the 2007 amendments to NRS 193.165 were neither the product of a court decision nor of constitutional dimension, 2007 Nev. Stat., ch. 525, § 13, at 3188; *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 571, 188 P.3d 1079, 1084 (2008).

We conclude that Gonzalez failed to demonstrate good cause to overcome the procedural bars to his petition, *see generally Branham v. Warden*, 134 Nev., Adv. Op. 99, \*8, 434 P.3d 313, 317 (Ct. App. 2018) (“[T]he United States Supreme Court decisions in *Welch* and *Montgomery* do not constitute good cause to raise a procedurally barred claim arguing that a nonconstitutional rule should be applied retroactively.”), and that the district court did not err by denying his procedurally barred postconviction habeas petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Jesus Rene Gonzalez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk