

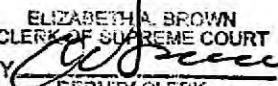
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR EDUARDO URIBE,  
Appellant,  
vs.  
TIMOTHY FILSON, WARDEN,  
Respondent.

No. 80967-COA

FILED

NOV 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Oscar Eduardo Uribe appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 6, 2018. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Uribe's petition was untimely because it was filed more than six years after the remittitur on direct appeal was issued on August 11, 2011,<sup>1</sup> *see* NRS 34.726(1), and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus that 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).

---

<sup>1</sup>*See Uribe v. State*, Docket No. 57422 (Order of Affirmance, July 15, 2011).

<sup>2</sup>*See Uribe v. State*, Docket No. 65534 (Order of Affirmance, November 12, 2014).

Uribe claimed he had good cause to overcome the procedural default because the 2015 passage of NRS 176.017 provided a legal basis for a claim that was not previously available. He argued that NRS 176.017 applies retroactively to his case and directs the district court to “consider the differences between juvenile and adult offenders, including, without limitation, the diminished culpability of juveniles and typical characteristics of youth.” And he asserts these statutory considerations were not reasonably available when he was sentenced.

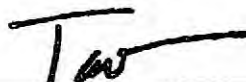
Uribe failed to demonstrate good cause. “[W]hen a petition raises a claim that was not available at the time of a procedural default under NRS 34.726(1), it must be filed within ‘a reasonable time after the basis for the claim becomes available.’” *Rippo v. State*, 134 Nev. 411, 420, 423 P.3d 1084, 1096 (2018). One year provides sufficient time to present a claim that was not factually or legally available at the time of the procedural default. *See id.* at 421-22, 423 P.3d at 1097. Uribe filed his petition more than three years after the basis for his claim became available, and he did not allege good cause for the entire length of this delay in filing the petition.

Uribe also failed to demonstrate actual prejudice. The Legislature has expressly limited the application of NRS 176.017 to offenses that were committed on or after October 1, 2015, and offenses that were committed before October 1, 2015, if the offender is convicted on or after October 1, 2015. *See* 2015 Nev. Stat., ch. 153, § 5, at 619. Uribe committed his offense on December 5, 2009, and he was convicted of that offense on December 17, 2010; therefore, he was not entitled to the retroactive application of NRS 176.017 to his case.

For the foregoing reasons, we conclude the district court did not did not err by denying Uribe's postconviction habeas petition. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of statutory procedural default rules to postconviction habeas petitions is mandatory."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Egan K. Walker, District Judge  
Oscar Eduardo Uribe  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

---

<sup>3</sup>To the extent Uribe also appeals from the district court's implicit denial of his motion for appointment of counsel, we conclude Uribe had a meaningful opportunity to present his claim to the district court and, therefore, the district court did not abuse its discretion by rejecting his motion. *See Renteria-Novoa v. State*, 133 Nev. 75, 78, 391 P.3d 760, 762 (2017).