

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN BROOKS, A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83118-COA

FILED

FEB 03 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Brooks appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Brooks filed his petition on January 5, 2021, more than 28 years after issuance of the remittitur on direct appeal on January 8, 1992. *Brooks v. State*, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991). Thus, Brooks' petition was untimely filed.¹ See NRS 34.726(1). Moreover, Brooks' petition was successive because he had previously filed several postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Brooks'

¹In addition, the petition was filed more than twenty years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 32, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Ripppo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018).

²*Brooks v. State*, No. 63879, 2014 WL 606343 (Nev. Feb. 12, 2014) (Order of Affirmance); *Brooks v. State*, No. 55775, 2010 WL 3554360 (Nev.

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

Brooks appeared to assert that the procedural bars should not apply to his petition because the Legislature recently amended NRS 207.010, and Brooks requested retroactive application of those amendments to his sentence. The question of whether the amendment of NRS 207.010 is to be applied retroactively is an issue of statutory interpretation, which we review de novo. *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). “[U]nless the Legislature clearly expresses its intent to apply a law retroactively, . . . the proper penalty is the penalty in effect at the time of the commission of the offense.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). The Legislature gave no indication in the text of NRS 207.010 that it intended to apply the amended statute retroactively. See 2019 Nev. Stat., ch. 633, § 86, at 4441-42; 2019 Nev. Stat., ch. 633, § 137, at 4488 (effective date of July 1, 2020).


Because the amendments to NRS 207.010 are not retroactive, they did not provide good cause, and Brooks did not demonstrate prejudice, to overcome the procedural bars. And Brooks did not overcome the rebuttable presumption of prejudice to the State. Therefore, we conclude

Sept. 10, 2010) (Order of Affirmance); *Brooks v. State*, Docket No. 48747 (Order of Affirmance, July 3, 2007); *Brooks v. State*, Docket No. 46807 (Order of Affirmance, July 14, 2006); *Brooks v. State*, Docket No. 43621 (Order of Affirmance, November 3, 2004); *Brooks v. State*, Docket No. 34575 (Order of Affirmance, February 22, 2001).

that Brooks was not entitled to relief, and the district court did not err by denying his petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Monica Trujillo, District Judge
Kevin Brooks
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk