

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN MICHAEL FERGASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83331-COA

FILED

MAR 24 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bryan Michael Ferguson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Ferguson filed his petition on January 5, 2021, more than ten years after issuance of the remittitur on direct appeal on December 14, 2010. *See Ferguson v. State*, No. 52877, 2010 WL 3310710 (Nev. Aug. 4, 2010) (Order of Affirmance). Thus, Ferguson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Ferguson's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous

petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Ferguson's 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, Ferguson was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Ferguson argued that the procedural bars should not apply to his petition because the Legislature recently amended NRS 205.275 and NRS 207.010, and he requested retroactive application of those amendments to his sentence. The question of whether the amendments of NRS 205.275 and NRS 207.010 are to be applied retroactively is an issue of statutory interpretation, which we review de novo. See *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 texts of NRS 205.275 and NRS 207.010 that it intended to apply the amended statutes retroactively. See 2019 Nev. Stat., ch. 633, § 69, at 4433; 2019 Nev.

¹*Ferguson v. State*, No. 74469, 2019 WL 1253391 (Nev. March 14, 2019) (Order of Affirmance).

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 205.275 and NRS 207.010 are not retroactive, they did not provide good cause, and Ferguson did not demonstrate prejudice, to overcome the procedural bars. And Ferguson did not overcome the rebuttable presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Christy L. Craig, District Judge
Bryan Michael Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Jerome T. Tao did not participate in the decision in this matter.