IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY EDWARD HAMILTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

JOHNNY EDWARD HAMILTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83749-COA

FILED

JUN 02 2022

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

✓ No. 83786-COA

## ORDER OF AFFIRMANCE

Johnny Edward Hamilton appeals from orders of the district court dismissing a postconviction petition for a writ of habeas corpus (Docket No. 83749) and denying a motion to correct an illegal sentence (Docket No. 83786). Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

*Postconviction petition for a writ of habeas corpus*

Hamilton argues the district court erred by dismissing his July 13, 2021, petition as procedurally barred. Hamilton filed his petition more than 19 years after entry of the judgment of conviction on January 29, 2002.[1] Thus, Hamilton's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hamilton's petition was successive because he had previously

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[1]Hamilton did not pursue a direct appeal.

22-17461

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.[2] *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Hamilton'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).

Hamilton asserted that the procedural bars should not apply to his petition because the Legislature recently amended the habitual criminal statute and he requested retroactive application of those amendments to his sentence. Hamilton's petition was filed more than one year after the effective date of the amendments to NRS 207.010, *see* 2019 Nev. Stat., ch. 633, § 137, at 4488 (effective date of July 1, 2020), and Hamilton did not explain his delay in raising his good-cause claim. Accordingly, Hamilton did not demonstrate good cause to overcome the procedural bars. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding that a good-cause claim must be raised within one year of it becoming available).

Moreover, the question of whether amendments to NRS 207.010 are 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 to

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[2]*See Hamilton v. State*, Docket No. 45178 (Order of Affirmance, April 20, 2006).

persons in Hamilton's situation. *See* 2019 Nev. Stat., ch. 633, § 86, at 4441-42. Because the amendments to NRS 207.010 are not retroactive, they did not provide good cause. Accordingly, Hamilton did not demonstrate actual prejudice sufficient to overcome the procedural bars. Therefore, we conclude the district court did not err by dismissing the petition as procedurally barred.

*Motion to correct an illegal sentence*

In his July 13, 2021, motion, Hamilton claimed the recent amendments to the habitual criminal statute should be applied to him retroactively. Hamilton's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of Hamilton's claim, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.          _____, J.
Tao                                    Bulla

cc:  Hon. Kathleen A. Sigurdson, District Judge
     Johnny Edward Hamilton
     Attorney General/Carson City
     Washoe County District Attorney
     Washoe District Court Clerk