

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL WINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83803-COA

FILED

AUG 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Manuel Winn appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Winn filed his petition on August 10, 2021, more than nine years after issuance of the remittitur on direct appeal on December 16, 2011.¹ *See Winn v. State*, No. 57313, 2011 WL 5846624 (Nev. Nov. 18, 2011) (Order of Affirmance). Thus, Winn's petition was untimely filed. *See* NRS 34.726(1). Moreover, Winn'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.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Winn's petition was procedurally

¹We note the petition was stamped as received by the district court on June 28, 2021. Even had the petition been filed immediately, it would still have been untimely.

²*Winn v. State*, No. 62081, 2013 WL 5321646 (Nev. Sept. 18, 2013) (Order of Affirmance).

barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Winn 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. Winn asserted that he was entitled to retroactive application of the amendments to his sentence based upon the United States Supreme Court decisions in *Welch v. United States*, 578 U.S. 120, 129-130 (2016), and *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), which discussed and applied the retroactivity of substantive rules of constitutional law.

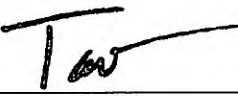
The decisions in *Welch* and *Montgomery* applied the existing retroactivity framework for substantive rules of constitutional law and did not alter the “threshold requirement that the new rule at issue must be a constitutional rule.” *Branham v. Baca*, 134 Nev. 814, 817, 434 P.3d 313, 316 (Ct. App. 2018). Winn’s challenge concerned retroactive application of an amended state statute and did not implicate a new constitutional rule. Thus, *Welch* and *Montgomery* are not applicable to Winn’s claim, and therefore, those decisions did not provide good cause.

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*. *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 text of NRS 207.010 that it intended to apply the amended statute retroactively

to persons in Winn'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 or actual prejudice sufficient to overcome the procedural bars. 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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Manuel Winn
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk