

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES WRIGHT, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84530-COA

FILED

NOV 30 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Wright, Jr., appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on August 24, 2020. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Wright argues that the district court erred by denying his petition as procedurally barred. Wright filed his petition 12 years after issuance of the remittitur on direct appeal on August 5, 2008. *Wright v. State*, No. 46964, 2008 WL 6124462 (Nev. July 10, 2008) (Order of Affirmance). Thus, Wright's petition was untimely filed. See NRS 34.726(1). Moreover, Wright'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 petitions.¹ See NRS 34.810(1)(b)(2), (2). Wright's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b), (3).

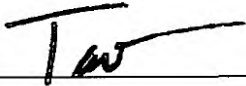
Below, Wright asserted the procedural bars should not apply to his petition because the Legislature recently amended the habitual criminal statute and he requested retroactive application of those amendments to his sentence. The question of whether the amendments to NRS 207.010 are to be applied retroactively 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 Wright's situation, see 2019 Nev. Stat., ch. 633, § 86, at 4441-42, and contrary to Wright's argument, the legislative history provided by Wright does not support his argument that the Legislature intended the amendments to apply retroactively. See Hearing on A.B. 236 Before the Assembly Judiciary Comm., 88th Leg. (Nev., Mar. 8, 2019). Because the amendments to NRS 207.010 are not retroactive, they did not provide good cause or result in

¹*Wright v. State*, No. 75401-COA, 2018 WL 6721351 (Nev. Ct. App. Dec. 19, 2018) (Order of Affirmance); *Wright v. State*, No. 56945, 2011 WL 4340897 (Nev. Sept. 14, 2011) (Order of Affirmance).

actual prejudice sufficient to overcome the procedural bars. Therefore, we conclude the district court did not err by dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk