

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL DAVID RANDELL,
Appellant,

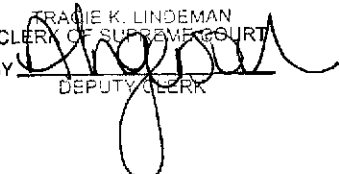
vs.

THE STATE OF NEVADA; GREGORY
SMITH, WARDEN; AND CATHERINE
CORTEZ MASTO, ATTORNEY
GENERAL OF THE STATE OF
NEVADA,
Respondents.

No. 61232

FILED

DEC 12 2013

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant filed his petition on May 24, 2011, almost eighteen years after issuance of the remittitur on direct appeal on February 23, 1993. *Randell v. State*, 109 Nev. 5, 846 P.2d 278 (1993). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *Id.* Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Appellant claimed that he had good cause based on the Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), which held that juveniles who commit non-homicide crimes cannot receive a

sentence of life without the possibility of parole. *Id.* at 82. Appellant claims that he was a juvenile at the time he committed his crimes and he was sentenced to life without the possibility of parole, and therefore, is entitled to have his sentence modified to include the possibility of parole. Appellant failed to demonstrate good cause because *Graham* does not apply to him. Appellant was convicted of first-degree murder, among other crimes, and *Graham* specifically does not apply to juveniles convicted of murder.¹ Moreover, appellant filed his petition more than one year after *Graham* was decided on May 17, 2010, and appellant failed to demonstrate good cause for the entire length of his delay.

To the extent that appellant relies on *Simmons v. Roper*, 543 U.S. 551 (2005), appellant's reliance is misplaced. *Roper* abolished the death penalty for juveniles. Because appellant did not receive the death penalty, *Roper* does not apply. In addition, *Roper* was decided in 2005, and appellant fails to demonstrate why he waited six years to file this petition. Finally, appellant failed to overcome the presumption of

¹Further, we note that *Miller v. Alabama* also does not apply to appellant. ___ U.S. ___, 132 S. Ct. 2455. *Miller* only applies in states where a juvenile is convicted of a homicide and the law mandates a sentence of life without the possibility of parole. In Nevada, the decision of whether to impose a sentence of life without the possibility of parole is discretionary, see NRS 200.030(4) (setting the potential penalties for first-degree murder as death, life without the possibility of parole, life with the possibility of parole after 20 years, or a term of 20 to 50 years), and therefore, appellant's sentence does not run afoul of *Miller*.

prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk