

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELDER ZACARIAS-LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71985

FILED

OCT 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant filed his petition on September 12, 2016, more than 12 years after remittitur issued from his direct appeal on June 8, 2004. See NRS 34.726(1). *Zacarias-Lopez v. State*, Docket No. 40116 (Order of Affirmance, May 11, 2004). Thus, his petition was untimely filed. Moreover, the petition was successive because appellant had previously filed a postconviction petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of

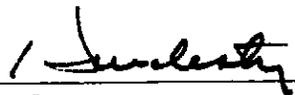
¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

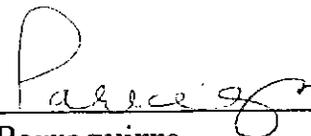
²*Zacarias-Lopez v. State*, Docket No. 44802 (Order of Affirmance, June 14, 2005); *Zacarias-Lopez v. State*, Docket No. 54427 (Order of Affirmance, September 10, 2010); *Zacarias-Lopez v. State*, Docket No. 66088 (Order of Affirmance, December 11, 2014).

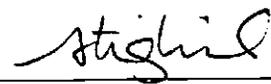
good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant argues that he demonstrated good cause and prejudice to raise a challenge to the *Kazalyn*³ instruction because the claim was not previously available. We conclude that appellant failed to demonstrate good cause and prejudice. See *Leavitt v. State*, 132 Nev., Adv. Op. 03, 386 P.3d 620 (2016) (concluding that a claim based on *Riley v. McDaniel*, 786 F.3d 719, 721 (9th Cir. 2015), does not establish good cause). Notably, the *Kazalyn* instruction was not given at appellant's trial and the jury was appropriately instructed pursuant to *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Jessie Elizabeth Walsh, District Judge
Elder Zacarias-Lopez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³*Kazalyn v. State*, 108 Nev. 67, 825 P.2d 578 (1992).