

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER BERNARD BAYOT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73097

**FILED**

DEC 14 2017

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

*ORDER OF AFFIRMANCE*

Alexander Bernard Bayot appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on December 29, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Bayot's petition was untimely because it was filed more than four years after the remittitur on direct appeal was issued on December 13, 2012,<sup>2</sup> and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus.<sup>3</sup> See NRS 34.726(1); NRS 34.810(2). Therefore, his petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Bayot claimed he had good cause to excuse the procedural bars because the State withheld a second letter from the Las Vegas Metropolitan

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

<sup>2</sup>See *Bayot v. State*, Docket No. 59410 (Order of Affirmance, November 15, 2012).

<sup>3</sup>See *Bayot v. State*, Docket No. 64070 (Order of Affirmance, March 12, 2014).

Citizen Review Board, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).<sup>4</sup> “[However,] a *Brady* claim still must be raised within a reasonable time after the withheld evidence was disclosed or discovered by the defense.” *State v. Huebler*, 128 Nev. 192, 198 n.3, 275 P.3d 91, 95 n.3 (2012). Bayot raised his *Brady* claim more than three years after he discovered the second letter.

We conclude the delay was unreasonable, the petition was procedurally barred, and the district court did not err in denying it as such. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>



Silver

C.J.



Gibbons

J.

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<sup>4</sup>Bayot claims on appeal there is good cause to excuse the procedural bars because the second letter is newly discovered evidence that entitles him to a new trial or relief from his judgment of conviction. Bayot did not raise this good-cause claim in his petition, and we decline to consider it for the first time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other rounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

<sup>5</sup>We also conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See NRS 34.750(1); Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017).

The Honorable Jerome Tao did not participate in this matter.

cc: Hon. Eric Johnson, District Judge  
Alexander Bernard Bayot  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk