

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAY PINEDA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78436-COA

**FILED**

OCT 15 2019

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

*ORDER OF AFFIRMANCE*

Ray Pineda appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on May 11, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Pineda's petition was untimely because it was filed more than four years after the remittitur on direct appeal was issued on August 19, 2013,<sup>2</sup> *see* NRS 34.726(1), and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits,<sup>3</sup> *see* NRS 34.810(2). Consequently, his petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

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<sup>1</sup>The district court vacated the petition because it did not comply with the statutory requirements, and Pineda subsequently cured the procedural defects and filed the petition again on December 7, 2018.

<sup>2</sup>*See Pineda v. State*, Docket No. 61382 (Order of Affirmance, July 22, 2013).

<sup>3</sup>*See Pineda v. State*, Docket No. 66281-COA (Order of Affirmance, April 15, 2015).

Pineda claimed he had good cause to overcome the procedural bars because the United States Supreme Court's recent decisions in *Welch v. United States*, 578 U.S. \_\_\_, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S. Ct. 718 (2016), provided a legal basis for raising a claim that was not previously available. He argued that pursuant to these decisions he was entitled to have the 2007 amendments to the deadly-weapon-enhancement statute (NRS 193.165) applied retroactively to his sentence for the use of a deadly weapon.

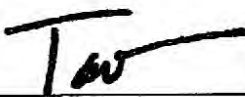
Pineda failed to demonstrate good cause. “[W]hen a petition raises a claim that was not available at the time of a procedural default under NRS 34.726(1), it must be filed within ‘a reasonable time’ after the basis for the claim becomes available.” *Rippo v. State*, 134 Nev. 411, 420, 423 P.3d 1084, 1096 (2018). Here, the district court found that Pineda filed his petition more than one year after the basis for his claim became reasonably available. We conclude the record supports this finding and the district court did not err by rejecting Pineda’s good-cause claim. *See generally id.* at 421-22, 423 P.3d at 1097 (recognizing that one year provides sufficient time to present a claim that was not factually or legally available at the time of the procedural default).

Pineda also failed to demonstrate actual prejudice. *Welch* and *Montgomery* addressed situations where the United States Supreme Court had previously ruled on the constitutionality of a statute or announced a new constitutional rule. *Welch*, 578 U.S. at \_\_\_, 136 S. Ct. at 1260-61; *Montgomery*, 577 U.S. at \_\_\_, 136 S. Ct. at 725-26. But, unlike in *Welch* and *Montgomery*, the 2007 amendments to NRS 193.165 are neither the product of a court ruling nor of constitutional dimension. 2007 Nev. Stat., ch. 525, § 13, at 3188; *State v. Second Judicial Dist. Court (Pullen)*, 124 Nev. 564,

571, 188 P.3d 1079, 1084 (2008). Consequently, *Welch* and *Montgomery* do not support Pineda's claim that he was entitled to the retroactive application of the 2007 amendments to NRS 193.165 and Pineda was not entitled to habeas relief.

Having concluded Pineda is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jerome M. Polaha, District Judge  
Ray Pineda  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk