

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEJANDRO ALIX MANZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79889-COA

FILED

MAY 15 2020

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

ORDER OF AFFIRMANCE

Alejandro Alix Manzo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 5, 2019. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Manzo filed his petition more than 10 years after issuance of the remittitur on direct appeal on November 12, 2008. *See Manzo v. State*, Docket No. 49002 (Order of Affirmance, October 17, 2009). Manzo's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive because he could have raised his claims in prior proceedings, *see* NRS 34.810(1)(b)(2), and an abuse of the writ because he raised claims new and different from those in his prior petitions, *see* NRS 34.810(2).¹ Manzo's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

¹*See Manzo v. State*, Docket No. 73480-COA (Order of Affirmance, June 13, 2018); *Manzo v. State*, Docket No. 54418 (Order of Affirmance, May 10, 2010).

Manzo claimed the holdings 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 good cause to overcome the procedural bars. To demonstrate good cause, “a petitioner must show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 271 P.3d 503, 506 (2003). Further, the claim of good cause must be raised within a reasonable time. *Id.* at 251-52, 71 P.3d at 505. One year provides sufficient time to present a claim that was not factually or legally available at the time of the procedural default. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Manzo’s petition was filed more than one year after *Welch* and *Montgomery* were decided, and accordingly, his good-cause argument was not raised within a reasonable time.²

Manzo claimed he was delayed in raising the good-cause argument because he did not learn of the new cases until April 2018. Manzo’s purported lack of legal knowledge was not an impediment external to the defense that prevented him from complying with the procedural bars. *Cf. Phelps v. Dir., Nev. Dep’t of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner’s claim of organic brain damage, borderline mental retardation, and reliance on assistance of an inmate law clerk unschooled in the law did not constitute good cause for filing a successive postconviction petition). Manzo acknowledged the case was available in the

²Manzo also contends he is timely from the decision in *Ex parte Williams*, 244 So. 3d 100 (Ala. 2017). Even were that case binding in Nevada, it does not announce new law but simply applies the holding in *Montgomery*. Accordingly, it would not provide good cause.

prison law library beginning in July 2016, also well over a year before he filed the instant petition.

Moreover, as a separate and independent ground to deny relief, *Welch* and *Montgomery* are inapplicable to Manzo's underlying substantive claim. Manzo claimed he was entitled to the retroactive application of the 2007 amendments to NRS 193.165. *Welch* and *Montgomery* address situations in which a court interpreted a statute or made a constitutional determination. See *Welch*, 578 U.S. at ___, 136 S. Ct. at 1264-65; *Montgomery*, 577 U.S. at ___, 136 S. Ct. at 726. The Legislature's changes to NRS 193.165 were not the result of a court decision and were not of constitutional dimension. See *State v. Second Judicial Dist. Court*, 124 Nev. 564, 565-66, 571, 188 P.3d 1079, 1080, 1084 (2008). Accordingly, *Welch* and *Montgomery* would not provide good cause to reach Manzo's underlying claim.

Finally, Manzo failed to overcome the presumption of prejudice to the State. See NRS 34.800(2). We therefore conclude the district court did not err by denying Manzo's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Alejandro Alix Manzo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk