

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER BARRETT HANKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86877-COA

FILED

APR 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alexander Barrett Hankins appeals from an order of the district court granting a motion to dismiss a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Hankins contends the district court erred by dismissing his petition without first conducting an evidentiary hearing on his claims to overcome procedural bars. Hankins filed his petition on November 22, 2022, more than six years after entry of the judgment of conviction on December 17, 2015.¹ Thus, Hankins' petition was untimely filed. *See* NRS 34.726(1). Hankins' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* To warrant an evidentiary hearing, a petitioner's good-cause claims must be supported by specific factual allegations that are not belied by the record and, if true, would entitle them to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

¹Hankins did not appeal from the judgment of conviction.


Hankins claimed he had cause for the delay because the basis for his claims was not reasonably available to be raised in a timely petition. Specifically, Hankins contended that (1) Assembly Bill (A.B.) 236 (2019) amended NRS 205.060 and NRS 205.228, his statutes of conviction; (2) these amendments became effective on July 1, 2020; and (3) these amendments apply retroactively pursuant to the United States Supreme Court's decisions in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and *Welch v. United States*, 578 U.S. 120 (2016). Hankins further contended that the state of emergency declared on March 12, 2020, in response to the COVID-19 pandemic resulted in prison lockdowns that prevented him from accessing the law library, obtaining legal assistance, or researching his claims.

Even assuming Hankins sufficiently alleged cause for the delay, Hankins failed to allege facts indicating undue prejudice would result if his claims were not heard on the merits. "A showing of undue prejudice necessarily implicates the merits of the" claims raised. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). As indicated above, Hankins sought the retroactive application of the A.B. 236 amendments to his statutes of conviction. "[U]nless the Legislature clearly expresses its intent to apply a law retroactively, . . . the proper penalty is the penalty in effect at the time of the commission of the offense." *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

A.B. 236 contains no retroactivity provisions, *see generally* 2019 Nev. Stat., ch. 633, and the Legislature gave no indication that it intended the relevant amendments to apply retroactively to persons in Hankins' situation. *See* 2019 Nev. Stat., ch. 633, § 55, at 4425-27 (amending NRS 205.060); 2019 Nev. Stat., ch. 633, § 63, at 4430-31 (amending NRS

205.228). Moreover, the United States Supreme Court's decisions in *Montgomery* and *Welch* are inapplicable to this matter. In *Montgomery*, the supreme court held that state courts must give retroactive effect to new substantive rules of constitutional law on collateral review. 577 U.S. at 200. In *Welch*, the supreme court held that its decision in *Johnson v. United States*, 576 U.S. 591 (2015), announced a new substantive rule of constitutional law that applied retroactively to cases on collateral review. 578 U.S. at 130. A.B. 236 did not create new substantive rules of constitutional law so as to implicate *Montgomery* or *Welch*. As such, Hankins failed to allege specific facts that, if true and not belied by the record, would have demonstrated undue prejudice such that he could overcome the procedural time bar. Accordingly, we conclude the district court did not err by dismissing the petition as procedurally time-barred without first conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Hankins filed a “motion of status check” on April 16, 2024. In light of this order, Hankins’ motion is denied as moot.

cc: Hon. Barry L. Breslow, District Judge
Alexander Barrett Hankins
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk