

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL MARQUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59251

**FILED**

APR 11 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

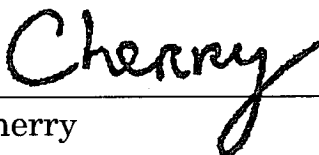
This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.


Appellant Samuel Marquez filed his petition on December 13, 2010, more than four years after issuance of the remittitur on direct appeal on April 21, 2006. Marquez v. State, Docket No. 42305 (Order of Affirmance, March 22, 2006). Thus, Marquez's petition was untimely filed. See NRS 34.726(1). The petition was also successive and an abuse of the writ because Marquez previously had litigated a post-conviction petition for a writ of habeas corpus. See Marquez v. State, Docket No. 49941 (Order of Affirmance and Remand to Correct Judgment of Conviction, October 21, 2008); NRS 34.810(1)(b)(2), (2). Therefore, Marquez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b), (3).

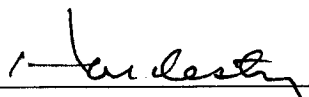
Marquez argues that the failure to present his claims in his first post-conviction petition was due to the ineffective assistance of his first post-conviction counsel, which constitutes good cause. However, Marquez cannot demonstrate good cause based upon a claim of ineffective

assistance of post-conviction counsel, as the appointment of counsel in the prior proceeding was discretionary.<sup>1</sup> See Crump v. Warden, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 253 & n.5 (1997); NRS 34.750. To the extent that Marquez claims that ineffective assistance of trial and appellate counsel constituted good cause to excuse his procedural defects, an ineffective-assistance-of-counsel claim that is itself procedurally barred cannot be good cause. NRS 34.726; Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we conclude that the district court did not err in determining that Marquez failed to demonstrate good cause to excuse his procedural defects. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Valorie J. Vega, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>1</sup>As to Marquez's reliance on Bennett v. State, 111 Nev. 1099, 901 P.2d 676 (1995), to support his argument that he should not be held responsible for his post-conviction counsel's ineffective assistance, we note that Bennett is procedurally distinct from Marquez's case.