

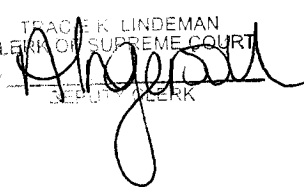
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LINZY BELLON,
Appellant,
vs.
WARDEN, DWIGHT NEVEN.
Respondent.

No. 61913

FILED

JAN 16 2014

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY  CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant filed his petition on July 18, 2012, more than four years after issuance of the remittitur on direct appeal on February 19, 2008. *Bellon v. State*, Docket No. 47798 (Order of Affirmance, October 17, 2008). Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).



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from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was 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).

First, appellant claimed that he had good cause because his post-conviction counsel improperly filed his first habeas petition late. Appellant failed to demonstrate he was entitled to relief. Appellant had no statutory right to post-conviction counsel, and thus the ineffective assistance of post-conviction counsel did not provide good cause for a successive and untimely petition. See *McKague v. Warden*, 112 Nev. 159, 164-65 & n.5, 912 P.2d 255, 258 & n.5 (1996); *Crump v. Warden*, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 253 & n.5 (1997).

Moreover, even assuming appellant could demonstrate good cause due to errors of post-conviction counsel, see *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), appellant failed demonstrate actual prejudice sufficient to overcome the procedural bars as discussed below. Appellant's post-conviction counsel filed appellant's first petition one day after the one-year filing period had expired. On appeal, this court concluded that appellant did not demonstrate cause for the delay in filing his petition. *Bellon v. State*, Docket No. 57223 (Order of Affirmance, April 11, 2012). This court also examined the underlying claims that appellant

²*Bellon v. State*, Docket No. 57223 (Order of Affirmance, April 11, 2012).


raised on appeal and concluded that appellant did not demonstrate prejudice sufficient to overcome the procedural bar. *Id.*

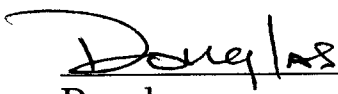
In the instant petition, appellant claimed that he had good cause due to his post-conviction counsel's error in filing the petition after the one-year deadline, but appellant did not raise any claims related to actual prejudice. As appellant failed to raise any allegations related to actual prejudice, his claim is a bare claim unsupported by specific factual allegations. Bare claims, such as this, are insufficient to demonstrate that appellant is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, even assuming appellant could demonstrate good cause for his second petition due to his post-conviction counsel's untimely filing of the first petition, appellant failed to demonstrate actual prejudice. To the extent appellant wished to reassert the underlying claims that this court determined to be procedurally barred on his previous appeal, this court has already concluded that appellant failed to demonstrate prejudice related to those claims. *Bellon v. State*, Docket No. 57223 (Order of Affirmance, April 11, 2012). The doctrine of law of the case prevents further litigation of those claims. *See Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, appellant failed to demonstrate he was entitled to relief.


Second, appellant claimed that he had good cause due to ineffective assistance of his post-conviction appellate counsel. Again, as appellant had no statutory right to post-conviction appellate counsel, the ineffective assistance of post-conviction appellate counsel did not provide good cause for a successive and untimely petition. *See McKague*, 112 Nev. at 164-65 & n.5, 912 P.2d at 258 & n.5; *Crump*, 113 Nev. at 303 & n.5, 934

P.2d at 253 & n.5. Therefore, the district court did not err in denying the petition as procedurally barred.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

³While appellant cited to the Supreme Court's decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), he did not discuss whether he wished to assert that *Martinez* applied to both of his good cause claims. Assuming appellant wished to argue that the *Martinez* decision applied to his ineffective-assistance-of-post-conviction-appellate-counsel claim, appellant's claim lacks merit. The Supreme Court stated that *Martinez* does not apply to "appeals from initial-review collateral proceedings," and therefore, it does not apply to appellant's claims of ineffective assistance of post-conviction appellate counsel. *Martinez*, 566 U.S. at ___, 132 S. Ct. at 1320.

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Linda Marie Bell, District Judge
Robert Linzy Bellon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk