

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY JAMES BENNETT,
Appellant,
vs.
JACK PALMER, WARDEN,
Respondent.

No. 62131

FILED

SEP 17 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Gregory James Bennett's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Bennett filed his petition on August 11, 2011, almost five years after this court issued the remittitur from his direct appeal on October 10, 2006. *Bennett v. State*, Docket Nos. 46913, 46914 (September 12, 2006). Thus, Bennett's petition was untimely filed. See NRS 34.726(1). Moreover, his petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus,¹ and it constituted an abuse of the writ to the extent that he raised claims new and different from those in his previous petition. See NRS 34.810(2). Bennett's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3).

¹*Bennett v. State*, Docket No. 53993 (Order of Affirmance, April 7, 2010).

Bennett, relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), argues that ineffective assistance of post-conviction counsel excused his procedural defects. Ineffective assistance of post-conviction counsel would not be good cause in the instant case because the appointment of counsel in the prior post-conviction proceedings was not statutorily or constitutionally required. *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Further, this court has recently held that *Martinez* does not apply to Nevada's statutory post-conviction procedures, see *Brown v. McDaniel*, ___ Nev. ___, ___ P.3d ___ (Adv. Op. No. 60, August 7, 2014), and thus, *Martinez* does not provide good cause for this late and successive petition. Accordingly, we conclude that the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Jerome Polaha, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk