

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY J. BURRIOLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62155

FILED

OCT 16 2014

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and a motion to correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Post-conviction petition for a writ of habeas corpus

Appellant filed his petition on October 16, 2012, more than ten years after issuance of the remittitur on direct appeal on July 5, 2002. *Burriola v. State*, Docket No. 34844 (Order Granting Rehearing and Modifying Order, June 10, 2002). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims

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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

new and different from those raised in his previous petitions.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).

Relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), appellant claimed 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*, 130 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 60, August 7, 2014), and thus, *Martinez* does not provide good cause for this late and successive petition. Therefore, the district court did not err in denying the petition as procedurally barred.

Motion to correct an illegal sentence

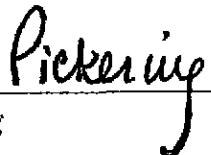
In his motion filed on February 6, 2012, appellant first claimed that the murder and deadly weapon jury instructions were improper. Appellant's claims regarding the jury instructions fell outside the narrow scope of claims permissible in a motion correct an illegal

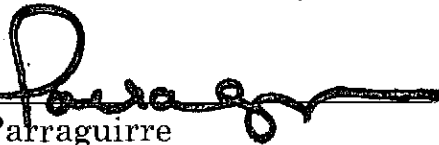
²*Burriola v. State*, Docket No. 55364 (Order of Affirmance, May 7, 2010); *Burriola v. State*, Docket No. 44015 (Order of Affirmance, September 13, 2005). No appeal was taken from the denial of appellant's first petition, which was filed on September 10, 2002.

sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, appellant was not entitled to relief for these claims.

Second, appellant claimed that the district court lacked jurisdiction because his right to a speedy trial was violated and the laws reproduced in the Nevada Revised Statutes do not contain enacting clauses. Appellant failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. See *id.* These claims failed to implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010. Therefore, we conclude that the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Pickering



_____, J.
Parraguirre

SAITTA, J., dissenting:

I would extend the equitable rule recognized in *Martinez* to this case because appellant was convicted of murder and is facing a severe

³We 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.

sentence. *See Brown v. McDaniel*, 130 Nev. ___, ___ P.3d ___ (Adv. Op. No. 60, August 7, 2014) (Cherry, J., dissenting). Accordingly, I would reverse and remand for the district court to determine whether appellant can demonstrate a substantial underlying ineffective-assistance-of-trial-counsel claim that was omitted due to the ineffective assistance of post-conviction counsel. I therefore dissent.



Saitta J.

cc: Hon. Elissa F. Cadish, District Judge
Anthony J. Burriola
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk