

IN THE SUPREME COURT OF THE STATE OF NEVADA

CECIL LAMAR HALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62809

**FILED**

**OCT 15 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

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

Appellant filed his petition on August 10, 2011, more than four years after this court issued the remittitur from his direct appeal on June 5, 2007. *Hall v. State*, Docket No. 47659 (Order of Affirmance, May 9, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus,<sup>1</sup> and it constituted an abuse of the writ because he raised claims new and different from those raised in his previous petition. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of

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<sup>1</sup>*Hall v. State*, Docket No. 51820 (Order of Affirmance, November 14, 2008).

good cause and prejudice. *See* NRS 34.726(1); NRS 34.810(3). Cause for the delay must be an “impediment external to the defense.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

First, appellant argues that his claim of mental incompetence was not reasonably available to him when he litigated his first post-conviction petition without the assistance of counsel. This claim is belied by the record, as he raised the issue of mental incompetence in his first petition. Appellant also contends that his mental incompetence caused by low IQ, brain damage, and mental illness constitutes good cause for the procedural defects. We conclude that appellant failed to demonstrate that an impediment external to the defense prevented him from raising the claims in his second petition earlier. *See Phelps v. Dir., Nev. Dep’t. Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

Second, appellant argues that official interference prevented him from adequately litigating his first post-conviction petition. He claims that he was assisted by a “renegade” inmate who had a history of misrepresenting himself as an attorney in the prison. We conclude that appellant fails to demonstrate that prison officials prevented him from complying with the post-conviction rules. To the extent that he asserts that he received poor assistance from the inmate in litigating his first post-conviction petition, this fails to constitute good cause. *See id.*

Third, relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), appellant argues that he had good cause because he was not appointed counsel in the first post-conviction proceedings. We conclude that this argument lacks merit. The appointment of counsel

would have been discretionary in the first post-conviction proceedings, *see* NRS 34.750(1), but appellant did not request the appointment of counsel to assist him in those proceedings. Further, this court has recently held that *Martinez* does not apply to Nevada's statutory post-conviction procedures. *See Brown v. McDaniel*, \_\_\_ Nev. \_\_\_, 331 P.3d 867 (2014). Thus, the failure to appoint post-conviction counsel and the decision in *Martinez* would not provide good cause for this late and successive petition.

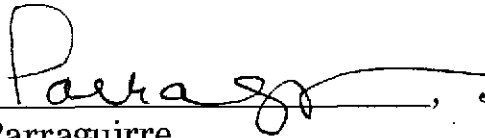
Fourth, appellant argues that he was denied due process during his first post-conviction proceedings because he did not receive an evidentiary hearing and he was not provided a copy of the order before it was filed. Appellant fails to demonstrate that this excuses his failure to raise the claims in his second petition earlier. Therefore, we conclude that he fails to demonstrate good cause.


Finally, appellant argues that failure to consider his claims on the merits would result in a miscarriage of justice because he was mentally incompetent when he entered his guilty plea. He also asserts that the district court should have held an evidentiary hearing on his claim of mental incompetence. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We further note that appellant was found

to be competent both before and after entering his guilty plea. Thus, no evidentiary hearing was warranted. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that a petitioner is entitled to an evidentiary hearing only when his claims are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief). Therefore, we conclude that the district court did no err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Saitta

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