

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY H. PHILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63521

FILED

SEP 16 2014

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

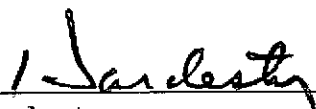
Appellant filed his petition on March 22, 2013, more than 11 years after entry of the judgment of conviction on March 6, 2002. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated several post-conviction petitions for a writ of habeas corpus and an abuse of the writ to the extent that he raised new claims.² See 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(3).

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).

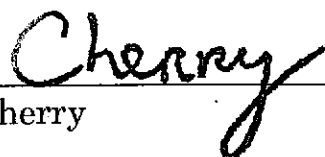
²*Philson v. State*, Docket No. 41394 (Order of Affirmance, April 14, 2004); *Philson v. State*, Docket No. 54828 (Order of Affirmance, June 9, 2010); *Philson v. State*, Docket No. 55827 (Order of Affirmance, January 24, 2011).

Relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), appellant argued that he had good cause because he was not appointed counsel in the first post-conviction proceedings. We conclude that this argument lacked merit. The appointment of counsel was discretionary in the first post-conviction proceedings, see NRS 34.750(1), and appellant failed to demonstrate an abuse of discretion or provide an explanation for why he could not raise this claim earlier. 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). Thus, the failure to appoint post-conviction counsel and the decision in *Martinez* would not provide good cause for this late and successive petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Carolyn Ellsworth, District Judge
Roy H. Philson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk