IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC MCCURDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66407

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.[1] Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on April 14, 2014, more than one year after entry of the judgment of conviction on June 12, 2012.[2] 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.[3] *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).

---

[1]This 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).

[2]No direct appeal was taken.

[3]*McCurdy v. State*, Docket No. 62608 (Order of Affirmance, January 16, 2014).

15-900111

First, appellant claimed he had good cause because his trial counsel improperly failed to file a direct appeal. This claim did not provide good cause to overcome the procedural bars. Appellant raised the underlying claim in his previous petition and the Nevada Supreme Court concluded that it was without merit. *McCurdy v. State*, Docket No. 62608 (Order of Affirmance, January 16, 2014). As appellant has previously asserted that he was improperly denied a direct appeal, further claims based upon that assertion cannot overcome the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 252 71 P.3d 503, 506 (2003).

Second, appellant appeared to claim that he had good cause due to the decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012). The Nevada Supreme Court has recently held that *Martinez* does not apply to Nevada's statutory post-conviction procedures. *See Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871 (2014). Thus, the decision in *Martinez* would not provide good cause for this late and successive petition.

Third, appellant claimed he had good cause because he did not have legal training. This claim failed to demonstrate that there was an impediment external to the defense that prevented him from complying with the procedural bars. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
Marc McCurdy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[4]We have reviewed all documents that appellant has submitted 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.