IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN TEUTLE-RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66417

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; Douglas Smith, Judge.

Appellant filed his petition on May 27, 2014, more than three years after entry of the judgment of conviction on August 9, 2010.[2] Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

First, appellant claimed that the decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), provided good cause. 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.

[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.

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___, 331 P.3d 867 (2014). Thus, the decision in *Martinez* would not provide good cause for this late petition.[3]

Second, appellant claimed he had good cause because he does not speak English and had to rely on inmate law clerks for the preparation of his petition. Appellant's alleged language barrier did not provide good cause in this case as appellant has already filed several documents in the district court and he did not demonstrate that any language barrier prevented him from filing a petition over the entire length of the delay. *See Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006) (holding that federal equitable tolling principles require a non-English speaking petitioner to demonstrate during the time period that the petitioner was unable to procure either legal materials in his own language or translation assistance despite diligent efforts). Moreover, appellant's reliance upon inmate law clerks did not demonstrate that there was an impediment external to the defense that prevented him from complying with the procedural time bar. *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).

Finally, appellant claimed that the procedural bar should not apply because he suffered from a fundamental miscarriage of justice. In

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[3]Appellant also asserted that *Nguyen v. Curry*, 736 F.3d 1287 (9th Cir. 2013), should provide good cause. However, *Nguyen* merely discussed and applied the decision in *Martinez*, and therefore, would also not provide good cause in this case.

order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Calderon v. Thompson*, 523 U.S. 538, 559 (1998). Appellant did not demonstrate actual innocence as his claim involved legal innocence. Therefore, appellant failed to show that "'it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.'" *Calderon*, 523 U.S. at 559 (quoting *Schlup v. Delo*, 513 U.S. 298, 327, (1995)); *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537; *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, the district court did not err in dismissing the petition as procedurally barred and we

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

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

[4]We also conclude that the district court did not err in denying appellant's "motion for leave to file next friend habeas petition" and motion for the appointment of counsel.

cc: Hon. Douglas Smith, District Judge
Juan Teutle-Ramirez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk