

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN NNCC,  
Respondent.

No. 66508

**FILED**

MAR 18 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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.<sup>1</sup> Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant filed his petition on May 1, 2013, nearly 13 years after issuance of the remittitur on direct appeal on June 20, 2000. *Voss v. State*, Docket No. 32830 (Order Vacating in Part and Affirming in Part, May 24, 2000). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>2</sup> See NRS

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<sup>1</sup>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).

<sup>2</sup>*Voss v. State*, Docket No. 54033 (Order of Affirmance, September 29, 2010); *Voss v. State*, Docket No. 62746 (Order of Affirmance, December 17, 2013).

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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).

In an attempt to overcome the procedural bars, appellant claimed that he was challenging the jurisdiction of the district court because the district court improperly changed the indictment from open murder to first-degree murder. This claim did not implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010. Therefore, the district court did not err in finding that appellant failed to establish good cause.


Next, appellant claimed that he was raising this claim regarding the indictment within a reasonable time of becoming aware of the facts in 2011. Appellant fails to demonstrate good cause because this claim was a claim that was available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore the district court did not err in finding that appellant failed to establish good cause.

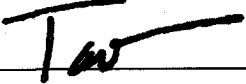
Finally, relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), appellant argued that ineffective assistance of post-conviction counsel excused his procedural defects. Ineffective assistance of post-conviction counsel does not provide good cause in the instant case because the 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. \_\_\_, \_\_\_, 331 P.3d

867, 871-72 (2014), and thus, *Martinez* does not provide good cause for this late and successive petition.

We conclude that the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Jerome Polaha, District Judge  
Steven Floyd Voss  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>3</sup>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.