

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY LYNN FRANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67295

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Jeffrey Lynn Franklin's August 13, 2014, petition was untimely because it was filed more than six years after the Nevada Supreme Court issued the remittitur on direct appeal on January 22, 2008.² See NRS 34.726(1). Franklin's petition was also successive because he had previously filed three post-conviction petitions for writs of habeas

¹This appeal has been submitted for decision without oral argument, see NRAP 34(f)(3), and we conclude 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).

²See *Franklin v. State*, Docket No. 48848 (Order of Affirmance, December 27, 2007).

corpus, and his first petition was denied on the merits.³ See NRS 34.810(2). Consequently, Franklin's petition was procedurally barred absent a showing of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Additionally, because the State specifically pleaded laches, Franklin was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).


Franklin appears to argue appellate and post-conviction counsels' ineffectiveness provided good cause to excuse his procedural default. However, Franklin's claim of ineffective assistance of appellate counsel was itself procedurally defaulted. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Franklin was not entitled to effective assistance of post-conviction counsel. See *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). And the United States Supreme Court's holding in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), does not apply to habeas petitions filed in state courts. *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014).⁴


³See *Franklin v. State*, Docket No. 52422 (Order of Affirmance, December 11, 2009); *Franklin v. State*, Docket No. 63352 (Order of Affirmance, December 12, 2013); *Franklin v. State*, Docket No. 65231 (Order of Affirmance, July 23, 2014).

⁴To the extent that Franklin also argued the district court's failure to appoint post-conviction counsel in the instant matter constitutes good cause to overcome his procedural default, his argument is without merit. Franklin does not have a constitutional or statutory right to post-conviction counsel, and the district court's decision to appoint such counsel is discretionary. See NRS 34.750(1); *Coleman v. Thompson*, 501 U.S. 722, 752 (1991); *McKague*, 112 Nev. at 164, 912 P.2d at 258.

We conclude Franklin failed to demonstrate good cause to excuse his procedural default. Further, Franklin made no attempt to respond to the State's plea of laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Jeffrey Lynn Franklin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵We have reviewed all documents Franklin has submitted in this matter, and we conclude no relief is warranted.