

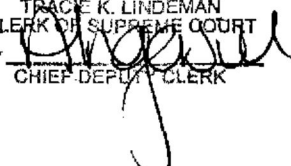
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTIS LONDELL MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67296

**FILED**

MAY 20 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF 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> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Artis Moore filed his petition on November 26, 2014, 14 years after issuance of the remittitur on direct appeal on August 7, 2000. *Moore v. State*, Docket No. 34052 (Order Dismissing Appeal, July 10, 2000). Thus, Moore's petition was untimely filed. *See* NRS 34.726(1). Moreover, Moore's petition was successive because he had previously filed two 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 petitions.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>1</sup>This appeal has been submitted for decision without oral argument, 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).

<sup>2</sup>*Moore v. State*, Docket No. 54521 (Order of Affirmance, May 7, 2010); *Moore v. State*, Docket No. 44514 (Order of Affirmance, December 1, 2006).

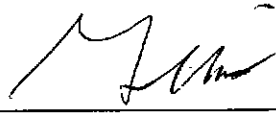
Moore's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).


First, Moore claimed he had good cause due to the Nevada Supreme Court's decisions in *Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002) and *Mitchell v. State*, 122 Nev. 1269, 149 P.3d 33 (2006) regarding the aiding and abetting jury instruction. Moore asserted he received the aiding and abetting instruction that was at issue in those cases and he should receive relief based upon application of those decisions. This claim cannot constitute good cause because the Nevada Supreme Court has already considered and rejected it in Moore's previous petition. *Moore v. State*, Docket No. 54521 (Order of Affirmance, May 7, 2010). The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Second, relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), Moore claimed ineffective assistance of post-conviction counsel excused his procedural defects. Ineffective assistance of post-conviction counsel was not 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, the Nevada Supreme Court has held *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* did not provide good cause for this late and successive petition.

Third, Moore claimed the procedural bars did not apply because he was actually innocent as he only acted as the getaway driver, he did not intend for the victim to die during the robbery, and the aiding and abetting instruction was improper. Moore did not demonstrate actual innocence because he failed to show "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude the district court did not err in denying Moore's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Artis Londell Moore  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk