

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH MARTIN NORTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67332

FILED

JUL 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
by *Tracie K. Lindeman*
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; Kathleen E. Delaney, Judge.

Appellant Joseph Martin Norton's October 8, 2014, petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ because some of the claims he raised were new and different from those he raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Therefore, Norton's petition was procedurally barred absent a

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).

²Norton did not appeal from the district court order denying his December 31, 2012, petition.

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demonstration of good cause and actual prejudice. NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to overcome the procedural bars, Norton claimed he had good cause because the trial transcripts were not available when he filed his first petition and therefore he was unable to argue his issues effectively. Norton argued he filed a timely request for the trial transcripts, and he asserted the order denying his first petition stated, “[t]his court has been unable to confirm or refute defendant’s assertion that the results of a latent fingerprint analysis were admitted at trial because the trial transcripts have not been produced.” However, Norton failed to show the trial transcripts were necessary to raise the issues he presented in this petition. Accordingly, Norton has not demonstrated good cause in this regard.

Next, Norton claimed his first petition was legally premature as it was filed during the pendency of his direct appeal and the district court failed to recognize this jurisdictional issue. However, Norton’s decision to file both his notice of appeal and post-conviction petition for a writ of habeas corpus at the same time did not bring about a jurisdictional defect or other legal infirmity. A post-conviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with the direct appeal and a pending direct appeal would not divest the district court of jurisdiction to consider the collateral petition. *See* NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing that the clerk of the district court shall file a habeas corpus petition as a

new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing that a post-conviction proceeding is separate from the direct appeal), *overruled on other grounds by Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988); *Groesbeck v. Warden*, 100 Nev. 259, 260, 679 P.2d 1268, 1268-69 (1984) (recognizing that a post-conviction habeas corpus petition is a petition seeking collateral review). Accordingly, Norton has not demonstrated good cause in this regard.


Finally, Norton claimed ineffective assistance of post-conviction counsel excused the procedural bars. However, Norton was not entitled to the effective assistance of post-conviction counsel because the appointment of counsel in the post-conviction proceeding was not statutorily or constitutionally required. *McKague v. Warden*, 112 Nev. 159, 164, 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). Accordingly, Norton has not demonstrated good cause in this regard.

Although the district court reached the merits of many of Norton's claims, we conclude Norton failed to demonstrate sufficient good cause to overcome the procedural bars to his petition and affirm the denial of his petition on this basis. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970)

(observing that a judgment or order of the district court will be affirmed if it reached the right result albeit for a wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Joseph Martin Norton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents Norton has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Norton has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.