

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHILLIP MINOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67404

FILED

JUN 16 2015

TRACIE S. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Phillip Minor filed his petition on September 2, 2014, more than 28 years after entry of the judgment of conviction on February 25, 1986.² Thus, Minor's petition was untimely filed. See NRS 34.726(1). Moreover, Minor's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous

¹This 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²No direct appeal was taken. We note the petition was untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

petitions.³ See NRS 34.810(2). Minor's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Minor was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

First, Minor claimed the decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), provided good cause. The Nevada Supreme Court 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). Thus, the decision in *Martinez* would not provide good cause for this late petition.

Second, Minor claimed the procedural bars did not apply because he filed his petition within one year of the filing of an amended judgment of conviction on November 16, 2013.⁴ Minor's claim was without merit. Minor did not challenge any changes made in the amended judgment of conviction; rather his claims challenged the original judgment of conviction. Therefore, the amended judgment of conviction did not provide good cause to overcome the procedural bars. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (explaining that an amended judgment of conviction may provide good cause to raise claims relating to

³*Minor v. State*, Docket No. 64085 (Order of Affirmance, April 10, 2014); *Minor v. State*, Docket No. 55481 (Order of Affirmance, November 8, 2010).

⁴The district court entered the amended judgment of conviction to award Minor an additional 128 days of credit for time served.

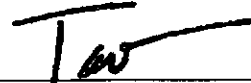
the amendment, but not for claims that could have been raised in prior proceedings).

Finally, Minor claimed the Nevada Supreme Court erred in dismissing a previous appeal. *See Minor v. State*, Docket No. 64561 (Order Dismissing Appeal, April 4, 2014). This claim was not within the scope of a post-conviction petition for a writ of habeas corpus. *See* NRS 34.720; NRS 34.724(1). Therefore, the district court did not err in denying relief for this claim.

Minor also failed to overcome the presumption of prejudice against the State. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Phillip Minor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk