

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN DAVID FOLLETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67478

**FILED**

JUN 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Appellant Sean Follett filed his petition on May 6, 2014, almost 3 years after issuance of the remittitur on direct appeal on July 5, 2011. Thus, Follett's petition was untimely filed. See NRS 34.726(1). Moreover, Follett's 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 as he raised claims new and different from those raised

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<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).

in his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Follett's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), Follett argued ineffective assistance of post-conviction counsel excused his procedural defects. Follett specifically asserted post-conviction counsel was ineffective for failing to adequately raise all of his claims below and for failing to file an appeal from the denial of his first post-conviction petition.<sup>3</sup> Ineffective assistance of post-conviction counsel would not be 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 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* did not provide good cause to file this late, successive, and


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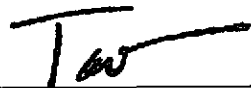
<sup>2</sup>Follett's pro se appeal from the denial of his October 17, 2011, petition and June 4, 2012, supplemental petition was dismissed for lack of jurisdiction. *Follett v. State*, Docket No. 65336 (Order Dismissing Appeal, May 13, 2014).

<sup>3</sup>Follett filed a pro se appeal from the denial of his first petition after learning counsel failed to file an appeal.

abusive petition. Accordingly, we conclude the district court did not err by dismissing the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

cc: Hon. Lynne K. Simons, District Judge  
Sean David Follett  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>4</sup>We have reviewed all documents Follett has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Follett 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.