

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR WILLIAMS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67627

**FILED**

JUL 14 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Elissa F. Cadish, Judge.

Appellant Oscar Williams, Jr. filed his petition on November 20, 2014, more than twenty-seven years after the remittitur from the direct appeal issued on April 21, 1987. *Williams v. State*, 103 Nev. 106, 734 P.2d 700 (1987). Thus, Williams' petition was untimely filed.<sup>2</sup> See NRS 34.726(1). Moreover, Williams' petition was successive because he had previously filed several post-conviction petitions for a writ of habeas

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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).

<sup>2</sup>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).



corpus and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>3</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Williams' 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). Moreover, because the State specifically pleaded laches, Williams was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

First, Williams claimed he had good cause due to ineffective assistance of trial and appellate counsel for failing to assert that his conviction violates the Double Jeopardy Clause. A procedurally barred claim of ineffective assistance of trial and appellate counsel cannot constitute cause for additional claims of ineffective assistance of counsel. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Williams' claims of ineffective assistance of trial and appellate counsel were reasonably available to be raised in a timely petition, and therefore, Williams fails to demonstrate an impediment external to the defense prevented him from complying with the procedural bars. See *id.* at 252-53, 71 P.3d at 506. Moreover, the Nevada Supreme Court has already

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<sup>3</sup>*Williams v. State*, Docket No. 55320 (Order of Affirmance, June 10, 2010); *Williams v. State*, Docket No. 53771 (Order of Affirmance, October 27, 2009); *Williams v. State*, Docket No. 51721 (Order of Affirmance, January 8, 2009); *Williams v. State*, Docket No. 40403 (Order of Affirmance, August 20, 2003); *Williams v. State*, Docket No. 39244 (Order of Affirmance, December 4, 2002); *Williams v. State*, Docket Nos. 34857, 35368 (Order Dismissing Appeal and Order, March 17, 2000); *Williams v. State*, Docket No. 19470 (Order Dismissing Appeal, June 29, 1989).

concluded Williams' double jeopardy claim is without merit and does not constitute good cause. *Williams v. State*, Docket No. 55320 (Order of Affirmance, June 10, 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, Williams, relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), 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. See *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* does not provide good cause for this late and successive petition.<sup>4</sup>

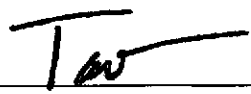
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<sup>4</sup>Williams also asserted *Nguyen v. Curry*, 736 F.3d 1287 (9th. Cir 2013), should provide good cause. *Nguyen* discussed and applied the *Martinez* decision. See *id.* at 1293-94. As the Nevada Supreme Court already concluded in *Brown* that *Martinez* did not apply to Nevada's statutory post-conviction procedures, the *Nguyen* court's discussion and application of the same issues as *Martinez* does not provide Williams good cause.

Finally, Williams failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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