

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRANCE MICHAEL BARKSDALE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67892

FILED

SEP 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Michelle Leavitt, Judge.

Appellant Terrance Michael Barksdale filed his petition on December 22, 2014, more than three and a half years after entry of the judgment of conviction on June 21, 2011.² Consequently, Barksdale's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

Relying primarily on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Barksdale argued ineffective assistance of counsel excused his procedural default. Barksdale asserted defense counsel was

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).

²No direct appeal was taken.

ineffective for failing to perfect a direct appeal because there were two appellate claims that had a reasonable likelihood of success: (1) he challenged the procedure employed to obtain his guilty plea “by telling the judge his counsel lied to him to get him to sign the plea agreement months prior to sentencing” and (2) the district court demonstrated an actual bias against him “by telling [him] that being deceived into a plea agreement doesn’t matter and that he would be sentenced under that plea agreement regardless.”

Barksdale’s ineffective-assistance-of-counsel claims do not provide good cause in this case because 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, 874 (2014), and the ineffective-assistance claims are themselves procedurally defaulted because they were reasonably available during the statutory period for filing a timely petition, see *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). 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.



Gibbons

C.J.



Tao

J.



Silver

J.

cc: Hon. Michelle Leavitt, District Judge
Terrance Michael Barksdale
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk