

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVERY ALLEN CHURCH, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68614

**FILED**

**DEC 29 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 postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant Avery Church filed his petition on March 17, 2015, six years after issuance of the remittitur on direct appeal on March 3, 2009. *Church v. State*, Docket No. 48741 (Order of Affirmance, February 3, 2009). Thus, Church's petition was untimely filed. See NRS 34.726(1). Moreover, Church's petition was an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Church's 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

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


<sup>2</sup>*Church v. State*, Docket No. 56402 (Order of Affirmance, October 5, 2011).

specifically pleaded laches, Church was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Relying in part on *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), Church argued that ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel would not be good cause in the instant case because the appointment of counsel in the prior postconviction 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 postconviction procedures, see *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 871-72 (2014), and thus, *Martinez* does not provide good cause for this untimely petition. Church also failed to overcome the presumption of prejudice to the State. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

<sup>3</sup>We also conclude the district court did not abuse its discretion by denying Church's motion to appoint counsel. See NRS 34.750(1).

cc: Hon. James M. Bixler, District Judge  
Avery Allen Church, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk