

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IVAN MICHAEL DOMINGUEZ, A/K/A
ARMANDO TORRESNAVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70677

FILED

JUL 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ivan Michael Dominguez appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 12, 2015. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Dominguez' petition was untimely because it was filed more than four years after the Nevada Supreme Court issued the remittitur on direct appeal on January 4, 2011.¹ See NRS 34.726(1). Dominguez' petition was successive because he has previously filed a postconviction petition for a writ of habeas corpus and that petition was denied on the merits.² See NRS 34.810(2). Consequently, Dominguez' petition was procedurally barred absent a showing of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

¹See *Dominguez v. State*, Docket No. 55699 (Order of Affirmance, December 10, 2010).

²See *Dominguez v. State*, Docket No. 60316 (Order of Affirmance, July 25, 2012).

First, Dominguez claimed there was good cause to excuse the procedural default because he did not receive due process during his first postconviction habeas proceeding. Dominguez specifically claimed a language barrier deprived him of the opportunity to be heard in a meaningful manner, postconviction counsel should have been appointed to help him overcome the language barrier, and the petition was not properly adjudicated because he did not have an adequate opportunity to review and respond to the proposed order.

Dominguez did not explain how a lack of due process during his first postconviction habeas proceeding provided good cause to excuse the procedural defects in his second postconviction habeas petition. Therefore, we conclude Dominguez' claim is a bare allegation and the district court did not err in finding Dominguez failed to show good cause in this regard. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding a petitioner is not entitled to postconviction relief if his claims are bare or repelled by the record); *see generally Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006) (holding a non-English-speaking petitioner seeking to toll the statutory period for filing a federal habeas petition must demonstrate he was unable to procure either legal materials in his own language or translation assistance from an inmate, library personnel, or other source during that period).

Second, relying in part on *Martinez v. Ryan*, 566 U.S. 1 (2012), Dominguez claimed there was good cause to excuse the procedural default because postconviction counsel was not appointed for his first postconviction habeas proceeding. However, the appointment of postconviction counsel 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), and the United States Supreme Court's decision in *Martinez* does not apply to Nevada's statutory postconviction procedures, *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014). Therefore, we conclude the district court did not err in finding Dominguez failed to show good cause in this regard.

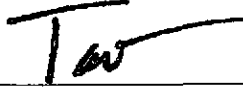
Third, Dominguez claimed there was good cause to excuse the procedural default because he raised a *Brady*³ violation in his second habeas petition. However, Dominguez' *Brady* claim consists of bare allegations that fail to establish the second and third prongs of a *Brady* violation and do not demonstrate the claim was raised within a reasonable time after the *Brady* material was disclosed to or discovered by the defense. See *Lisle v. State*, 131 Nev. ___, ___, 351 P.3d 725, 728 (2015); *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012); *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, we conclude the district court did not err in finding Dominguez failed to show good cause in this regard.


Dominguez also claims the district court erred by denying his *Brady* claim on the merits. We conclude the district court erred by reaching the merits of this claim because all of Dominguez' claims were procedurally defaulted and could not be considered on their merits. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1974 (2005) (explaining the application of procedural bars is mandatory). However, we further conclude the district court reached the right result. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the judgment of a district court if it reached the right result albeit for a wrong reason).

³*Brady v. Maryland*, 373 U.S. 83 (1963).

Having concluded Dominguez is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Mario D. Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk