

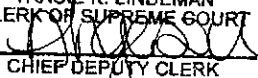
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ROSS BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66882

FILED

FEB 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF 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.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Anthony Black filed his petition on June 16, 2014, 14 years after issuance of the remittitur on direct appeal on June 20, 2000. *Black v. State*, Docket No. 33753 (Order Dismissing Appeal, May 25, 2000). Thus, Black's petition was untimely filed. See NRS 34.726(1). Moreover, Black's petition was successive because he had previously filed three postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS

¹This 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).

²See *Black v. State*, Docket No. 64552 (Order of Affirmance, June 11, 2014); *Black v. State*, Docket No. 44472 (Order of Affirmance, April 27, 2005); *Black v. State*, Docket No. 38780 (Order of Affirmance, May 7, 2003).

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34.810(2). Black'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).

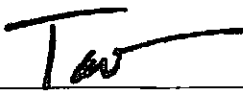
First, Black claimed he had good cause pursuant to *Lafler v. Cooper*, 566 U.S. ___, 132 S. Ct. 1376 (2012) because counsel was ineffective for telling him to reject a plea offer. This claim is without merit because this claim of ineffective assistance of counsel was always available to be raised and Black failed to demonstrate why he waited 14 years to raise it. Further, because his case was final when *Lafler* was decided, he failed to demonstrate the case would apply retroactively to him. Even if *Lafler* announced a new rule of constitutional law, Black's conviction was already final when the rule was announced and he has not established that either exception for retroactive application applies. See *Colwell v. State*, 118 Nev. 807, 820, 59 P.3d 463, 472 (2002). Therefore, the district court did not err in denying this claim.

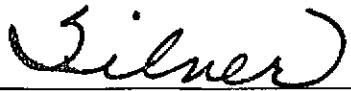
Next, relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Black argued ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel would not be good cause in the instant case because the appointment of counsel 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 *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 late and successive

petition. Accordingly, the district court did not err in denying this claim, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kenneth C. Cory, District Judge
Anthony Ross Black
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents Black has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Black 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.