

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE PEREZ-RUIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69424

FILED

JUN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Jose Perez-Ruiz filed his petition on February 17, 2015,¹ more than six years after entry of the judgment of conviction on

¹We note Perez-Ruiz previously filed a motion to withdraw his guilty plea on February 28, 2014, which was denied by the district court based on the equitable doctrine of laches. The Nevada Supreme Court reversed that denial based on *Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (holding a postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a plea after sentencing and that a post-sentencing motion to withdraw a guilty plea should be construed as a postconviction petition for a writ of habeas corpus), and remanded the motion to the district court to allow Perez-Ruiz a reasonable time to cure any defects with respect to the procedural requirements of NRS Chapter 34. *Perez-Ruiz v. State*, Docket No. 65979 (Order of Reversal and Remand, October 16, 2014).

August 5, 2008.² Thus, Perez-Ruiz's petition was untimely filed. See NRS 34.726(1). Moreover, Perez-Ruiz's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus.³ See NRS 34.810(2). Perez-Ruiz's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Perez-Ruiz was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Relying on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Perez-Ruiz 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. Perez-Ruiz also fails to overcome the rebuttable

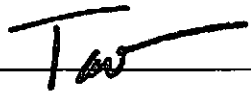
²No direct appeal was taken.

³Perez-Ruiz did not appeal the denial of his first postconviction petition which was filed in the district court on June 16, 2009.

presumption of prejudice. Therefore, the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk