

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE MURRDOCK BRASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69623

FILED

OCT 18 2016

ELIZABETH A. BROWN
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.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Brass filed his petition on September 18, 2015, more than four years after issuance of the remittitur on direct appeal on January 4, 2011. *Brass v. State*, Docket No. 55252 (Order of Affirmance, December 10, 2010). Thus, Brass' petition was untimely filed. See NRS 34.726(1). Moreover, Brass' petition was successive because he had previously filed a postconviction petition 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 petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Brass' petition was procedurally barred absent a demonstration of good cause

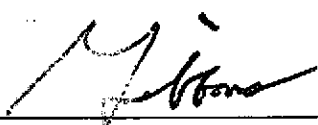
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. See NRAP 34(f)(3), (g).


²*Brass v. State*, Docket No. 61617 (Order of Affirmance, September 19, 2013).

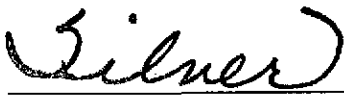
and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Relying in part on *Martinez v. Ryan*, 566 U. S. ___, ___, 132 S. Ct. 1309 (2012), Brass claimed ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel was not good cause in the instant case because the appointment of counsel in the prior postconviction proceeding 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). 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* did not provide good cause for this late and successive petition. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³In addition, we conclude the district court did not err in denying Brass' motion for the appointment of counsel and request for evidentiary hearing.

cc: Hon. Stefany Miley, District Judge
George Murrdock Brass
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk