

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ROBERT COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69222

FILED

JUN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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 and a postconviction motion to withdraw his guilty plea.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Mark Collins filed his petition on August 27, 2015, five years after entry of the judgment of conviction on September 2, 2010.² Thus, Collins' petition was untimely filed.³ See NRS 34.726(1). Moreover,

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

We conclude the district court did not abuse its discretion by declining to appoint counsel to represent Collins in this matter. See NRS 34.750(1).

²No direct appeal was taken.

³The district court properly construed the motion to be a postconviction petition pursuant to *Harris v. State*, 130 Nev. ___, ___ 329 P.3d 619, (2014) (holding "a postconviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged").

Collins' petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.⁴ See NRS 34.810(2). Collins' petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

As good cause to overcome the procedural bars, Collins claims he could not file a timely postconviction petition because he was represented by counsel during the year period for filing a petition, counsel did not give him his file until eight months after he withdrew, and counsel did not file a direct appeal when he knew appellant was innocent. These claims of good cause have been previously raised and rejected by the Nevada Supreme Court, *Collins v. State*, Docket No. 64433 (Order of Affirmance, April 10, 2014), and are therefore barred by the doctrine of the law of the case, *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

Relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Collins argued he had good cause because he was not appointed counsel in the first postconviction proceedings. We conclude this argument lacked merit. The appointment of counsel was discretionary in the first postconviction proceedings, see NRS 34.750(1), and Collins failed to demonstrate an abuse of discretion. 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). Thus, the failure to appoint

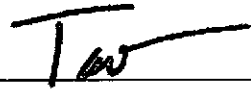
⁴*Collins v. State*, Docket No. 68559 (Order of Affirmance, November 19, 2015); *Collins v. State*, Docket No. 64433 (Order of Affirmance, April 10, 2014)


postconviction counsel and the decision in *Martinez* would not provide good cause.

Collins also claims he is actually innocent. Collins did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude the district court did not err in denying Collins' petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Mark Robert Collins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk