

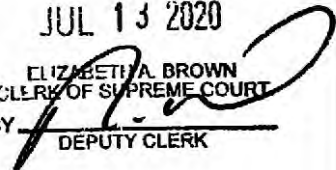
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESHAWN LAMONT THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79087-COA

**FILED**

JUL 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Deshawn Lamont Thomas appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Thomas filed his petition on January 25, 2018, more than six years after issuance of the remittitur on direct appeal on October 17, 2011. *See Thomas v. State*, Docket No. 56419 (Order of Affirmance, September 19, 2011). Thus, Thomas's petition was untimely filed. *See* NRS 34.726(1). Moreover, Thomas's 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.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Thomas'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).

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<sup>1</sup>*Thomas v. State*, Docket No. 71547 (Order of Affirmance, December 14, 2017).

First, relying in part on *Martinez v. Ryan*, 566 U.S. 1 (2012), Thomas claims that ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel did not constitute 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 that *Martinez* does not apply to Nevada's statutory postconviction procedures, see *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014), and thus, *Martinez* did not provide good cause for filing this late and successive petition. Therefore, Thomas is not entitled to relief based upon this claim.

Second, Thomas appears to claim he had good cause because he sought to exhaust his state remedies in order to pursue federal habeas relief. However, filing a procedurally barred petition for exhaustion purposes did not amount to good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *abrogated by statute on other grounds as recognized by State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012). Therefore, Thomas is not entitled to relief based upon this claim.

Third, Thomas claims the State did not timely respond to his petition and therefore conceded error. However, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Thomas had the burden of pleading and proving facts to overcome the procedural bars, *cf. State v. Haberstroh*, 119

Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Because Thomas failed to meet his burden to overcome the procedural bars, the district court properly denied the petition as procedurally barred even though the State filed an untimely response to his petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Cristina D. Silva, District Judge  
The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk