

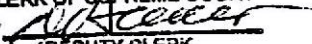
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL D. ORELLANA,  
Appellant,  
vs.  
RENEE BAKER; AND THE STATE OF  
NEVADA,  
Respondents.

No. 82009-COA

**FILED**

JUN 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Manuel D. Orellana appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 28, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Orellana filed his petition more than 10 years after issuance of the remittitur on direct appeal on October 6, 2009. *See Orellana v. State*, Docket No. 50102 (Order Affirming in Part and Reversing in Part, May 29, 2009). Thus, Orellana's petition was untimely filed. *See* NRS 34.726(1). Moreover, Orellana's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, 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). Orellana'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), or that he was actually

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<sup>1</sup>*Orellana v. State*, Docket No. 59439 (Order of Affirmance, April 9, 2013).

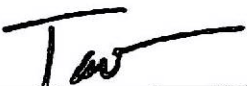
innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, Orellana was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

In his petition, Orellana claimed that the decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), provided good cause. The Nevada Supreme Court has held that *Martinez* does not apply to Nevada's statutory postconviction procedures. *See Brown v. McDaniel*, 130 Nev. 565, 570-71, 331 P.3d 867, 871-72 (2014). Thus, the decision in *Martinez* would not provide good cause for this late, successive, and abusive petition, and we conclude the district court did not err by denying this claim.

To the extent Orellana claimed he was actually innocent, he failed to support this claim with specific facts that would entitle him to relief. *See Rippo v. State*, 134 Nev. 411, 417, 423 P.3d 1084, 1093 (2018). Further, Orellana failed to overcome the rebuttable presumption of prejudice to the State. Therefore, we conclude 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.  
Bulla

cc: Hon. Michael Villani, District Judge  
Manuel D. Orellana  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk