

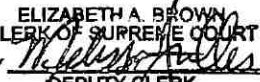
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, SR., WARDEN;
JEREMY BEAN, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 91405-COA

FILED

APR 30 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bennett Grimes appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 2, 2024. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Grimes contends the district court erred by denying his petition as procedurally barred. In his petition, Grimes claimed that the trial court erred in instructing the jury on attempted murder and that trial counsel was ineffective for failing to object to the instructions or otherwise challenge an implied malice theory of attempted murder. Grimes filed his petition more than nine years after issuance of the remittitur on direct appeal on March 24, 2014. *See Grimes v. State*, No. 62835, 2014 WL 819469 (Nev. Feb. 27, 2014) (Order of Affirmance). Thus, Grimes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Grimes' 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

petitions.¹ See NRS 34.810(1)(b)(2); NRS 34.810(3). Grimes' 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(4).

In his petition, Grimes claimed he had good cause to overcome the procedural bars because postconviction counsel failed to raise his claims in a prior petition. In particular, Grimes claimed the ineffective assistance of postconviction counsel excused his procedural defect pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012).

The purported ineffective assistance of postconviction counsel would 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, 164-65, 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). Therefore, Grimes failed to demonstrate good cause,² and we

¹See *Grimes v. Johnson*, No. 84776-COA, 2022 WL 16847554 (Nev. Ct. App. Nov. 9, 2022) (Order of Affirmance); *Grimes v. Williams*, No. 81697-COA, 2021 WL 2494015 (Nev. Ct. App. June 17, 2021) (Order of Affirmance); *Grimes v. State*, No. 74419-COA, 2018 WL 6721398 (Nev. Ct. App. Dec. 19, 2018) (Order of Affirmance).

²We note that, even if the ineffective assistance of postconviction counsel could constitute good cause in this matter, Grimes would still not be entitled to relief because his claims of ineffective assistance of postconviction counsel were untimely, as they were not raised within one year after the remittitur issued in the first postconviction appeal, see *Rippo v. State*, 134 Nev. 411, 419-22, 423 P.3d 1084, 1095-97 (2018), and Grimes does not explain his delay in raising the postconviction-counsel claims.

conclude the district court did not err by denying Grimes' petition as procedurally barred. Accordingly,³ we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Bulla


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³To the extent Grimes raises other arguments not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

⁴The Honorable Deborah L. Westbrook did not participate in the decision in this matter.