

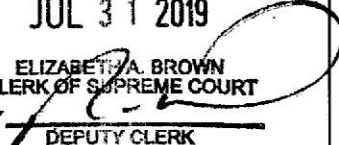
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ROBERT THOMSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76102-COA

FILED

JUL 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

David Robert Thomson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 8, 2018.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Thomson filed his petition nearly four years after issuance of the remittitur on direct appeal on May 27, 2014. *See Thomson v. State*, Docket No. 60169 (Order of Affirmance, February 28, 2014). Thus, Thomson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Thomson'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.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Thomson'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).


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

²*Thomson v. State*, Docket No. 70354-COA (Order of Affirmance, July 12, 2017).

Thomson claims the district court erred by denying his good cause claim. Relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Thomson argued that 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 proceedings 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 that *Martinez* does not provide good cause. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). 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. Valerie Adair, District Judge
David Robert Thomson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk