

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUINCY RAY SOLOMON JULIAN,
Appellant,
vs.
THE STATE OF NEVADA; AND
LEGRAND, WARDEN,
Respondents.

No. 70106

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Quincy Ray Solomon Julian appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on February 24, 2014. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Julian did not pursue a direct appeal and his habeas petition was filed more than four years after the judgment of conviction was entered on February 16, 2010; consequently, his petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

Relying in part on *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), Julian claims the district court erred by dismissing his untimely habeas petition because ineffective assistance of postconviction counsel provided good cause to excuse the procedural default and the

failure to reach the merits of his claims would result in a fundamental miscarriage of justice.¹

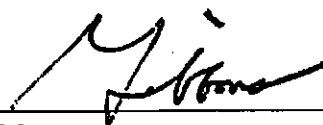
Ineffective assistance of postconviction counsel does not provide good cause to excuse Julian's procedurally-barred habeas petition because the appointment of postconviction counsel was not statutorily or constitutionally required, *see Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996), and the United State Supreme Court's decision in *Martinez* does not apply to Nevada's statutory postconviction procedures, *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014).


The fundamental miscarriage of justice standard does not apply in Julian's case because he failed to make a "colorable showing that constitutional error has resulted in the conviction of one who is actually innocent." *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 526 (2003); *see Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (Explaining that "actual innocence means factual innocence, not mere legal insufficiency." (internal quotation marks and alterations omitted)); *see generally Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (discussing the miscarriage-of-justice standard's very narrow scope).


¹Julian was represented by counsel in his post-sentence motion to withdraw guilty plea and his first postconviction petition for a writ of habeas corpus. *See Julian v. State*, Docket No. 61000 (Order of Affirmance, September 18, 2013); *Julian v. State*, Docket No. 60999 (Order of Affirmance, September 18, 2013).

We conclude Julian failed to demonstrate the district court erred by dismissing his untimely habeas petition, *see* NRS 34.726(1); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”), and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²In light of our decision, we decline to address the remaining claims in Julian’s opening brief.