IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDILFREDO CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69392

FILED

AUG 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellant Edilfredo Chavez filed his petition on September 14, 2015, more than four years after issuance of the remittitur on direct appeal on June 6, 2011. *Chavez v. State*, Docket No. 53365 (Order of Affirmance, May 12, 2011). Thus, Chavez's petition was untimely filed. *See* NRS 34.726(1). Moreover, Chavez'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). Chavez's petition was procedurally barred

[1]This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

[2]*Chavez v. State*, Docket No. 63600 (Order of Affirmance, June 24, 2014).

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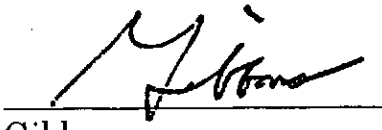
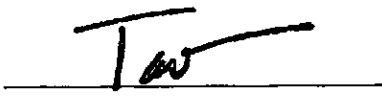
absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Chavez alleges he has good cause to overcome the procedural bars based on ineffective assistance of postconviction counsel. Ineffective assistance of postconviction counsel did not provide 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 v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012) does not apply to Nevada's statutory postconviction procedures, *see Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014), and, thus, *Martinez* does not provide good cause for this late and successive petition. We also conclude this claim was a bare and naked claim because Chavez failed to support it with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Tao

cc: Hon. Richard Scotti, District Judge
Edilfredo Chavez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk