

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LARRY E. WILLIAMS,)	4:13CV3170
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
MICHAEL L. KENNEY,)	
)	
Respondent.)	

This matter is before the court on Petitioner Larry E. Williams’ (“Petitioner” or “Williams”) Motion to Alter or Amend Judgment. (Filing [35](#).) In the Motion, Williams asks me, pursuant to [Fed. R. Civ. P. 59\(e\)](#), to reconsider my October 10, 2014, Order and Judgment dismissing his Petition for Writ of Habeas Corpus. (*Id.*) In particular, Williams asks me to reconsider my finding that the United States Supreme Court’s decision in [Martinez v. Ryan, 132 S. Ct. 1309 \(2012\)](#), did not excuse the procedural default of his ineffective assistance of trial counsel claims. (*Id.*)

“[Rule 59\(e\)](#) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.” [U.S. v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933 \(8th Cir. 2006\)](#) (internal citations and quotations omitted).

I have carefully reviewed Williams’ Motion and find that he is not entitled to relief under [Rule 59\(e\)](#). As my October 10, 2014, Memorandum and Order explained, Williams’ ineffective assistance of trial counsel claims were raised in an initial-review post-conviction proceeding, but they were not preserved on appeal. (See Filing [33](#) at CM/ECF pp. 9-10.) As a result, Williams’ ineffective assistance of trial counsel claims were procedurally defaulted. (*Id.*) Under these circumstances, *Martinez* does not provide cause to excuse the default. (*Id.* at CM/ECF pp. 10-11.) See also [Arnold](#)

[v. *Dormire*, 675 F.3d 1082, 1086-88 \(8th Cir. 2012\)](#) (concluding *Martinez* does not apply where ineffective assistance of trial counsel claims were litigated in an initial-review collateral proceeding, but not preserved on appeal).

IT IS THEREFORE ORDERED that Williams' Motion to Alter or Amend Judgment (filing [35](#)) is denied.

DATED this 26th day of November, 2014.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

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