

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK PITTMAN BURNS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63405

FILED

MAR 11 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

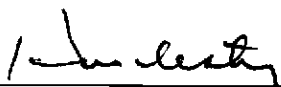
This is an appeal from a district court order denying appellant Frank Burns' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Burns contends that the district court erred by concluding that he failed to demonstrate good cause to excuse the untimely filing of his petition because he reasonably believed counsel was filing a direct appeal and did not learn otherwise until after the relevant time period had expired. *See Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). Specifically, Burns contends that the district court failed to consider the individual circumstances of the case. When reviewing a district court's good cause determinations, we give deference to its factual findings but review its legal conclusions de novo. *State v. Huebler*, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012), *cert. denied*, 568 U.S. \_\_\_, 133 S. Ct. 988 (2013).

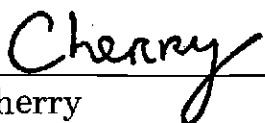
Burns testified at the evidentiary hearing that, prior to pleading guilty, he told counsel the victim was over the age of fourteen at the time the lewd acts occurred and counsel replied that he would correct her age on appeal; therefore, he believed counsel was filing an appeal and did not learn otherwise until January, 2012. The district court found that

Burns was not credible because his testimony was contradicted by the evidence, which indicated that he never communicated with counsel about an appeal after pleading guilty, never discussed his intent to appeal during subsequent proceedings, and was aware of the status of his case prior to the procedural default. Conversely, the district court found credible counsel's testimony that he did not tell Burns he would file an appeal, did not recall Burns asking him to file an appeal, and would have remembered if Burns asked him to file an appeal because the guilty plea agreement was extremely favorable and there were no non-frivolous claims to raise. The district court's determinations are supported by the record and the evidence presented at the evidentiary hearing. We conclude that the district court did not err by finding that Burns failed to demonstrate good cause to excuse the untimely filing of his petition. *See Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("On matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion."), *abrogation on other grounds recognized by Harte v. State*, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000); *State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Elissa F. Cadish, District Judge  
L.J. O'Neale LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk