

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE M. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63608

FILED

APR 10 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant filed his petition on February 6, 2013, nearly three years after the filing of his judgment of conviction on February 15, 2010.² Appellant's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).


Appellant claimed that he had cause for the delay because he believed counsel was pursuing a direct appeal. Appellant's mistaken but reasonable belief that counsel was pursuing a direct appeal could demonstrate cause for the delay. *Hathaway v. State*, 119 Nev. 248, 251, 71 P.3d 503, 505 (2003). The district court's finding that appellant recanted


¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

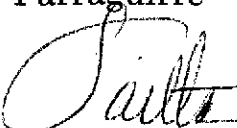
²No direct appeal was taken.

his claim that he had requested a direct appeal is supported by substantial evidence in the record, *see Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), and appellant failed to demonstrate any other reason why he would have reasonably believed that counsel was in fact pursuing a direct appeal. Accordingly, appellant failed to demonstrate cause for the delay. We therefore conclude that the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Valerie Adair, District Judge
Jose M. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk