

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHET DUDA A/K/A CHESTER DUDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68064

FILED

OCT 19 2015

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 a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Chet Duda filed his petition on December 15, 2014, more than one year after entry of the judgment of conviction on September 24, 2013. Thus, Duda's petition was untimely filed.² See NRS 34.726(1). Duda's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *Id.*

Duda argued he has good cause to overcome the procedural bar because he asked counsel to file a direct appeal and counsel failed to do so. The district court conducted an evidentiary hearing on this issue.


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


²We note that Duda was not challenging the amended judgment of conviction which was filed on February 6, 2014. Therefore, the amended judgment of conviction did not provide good cause in this case. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Counsel testified that Duda did not request, either verbally or in writing, that she file an appeal. Further, her file did not contain any letters from Duda requesting an appeal, and she keeps all correspondence from clients. The district court found this testimony to be credible, and substantial evidence supports this determination. *See Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). 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


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Chet Duda
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk