

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLINT BRADLEY MOSS,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 70790

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF THE COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Clint Bradley Moss appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on June 5, 2013. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Moss did not file a direct appeal and his habeas petition was filed more than three years after the judgment of conviction was entered on May 13, 2010; consequently, Moss' petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

Moss claims the district court erred by denying his untimely petition because his belief that defense counsel was pursuing a direct appeal was objectively reasonable and he filed his petition within a reasonable time after concluding defense counsel had not pursued a direct appeal.

The district court conducted an evidentiary hearing and made the following factual findings. Moss actually believed defense counsel was pursuing a direct appeal. Moss' belief was not objectively reasonable because defense counsel had filed a notice of withdrawal and the direct

appeal would not have been pending for three years. Moss did not file his habeas petition within a reasonable amount of time after learning no direct appeal was being pursued on his behalf.

We defer to the district court's factual findings, *see State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012), and we conclude the district court did not err by denying Moss' petition as procedurally barred, *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hathaway v. State*, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Nancy L. Porter, District Judge
Lockie & Macfarlan, Ltd.
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk