

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL TRINIDAD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71338

FILED

JUL 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Manuel Trinidad appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Trinidad filed his petition on May 16, 2016, 19 months after entry of the judgment of conviction on October 21, 2014. Thus, Trinidad's petition was untimely filed. *See* NRS 34.726(1). Trinidad's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

In his petition, Trinidad claimed he had good cause to overcome the procedural bars because he asked counsel to file an appeal on his behalf and he filed his petition within a reasonable time of learning

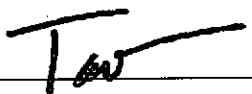
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


counsel had not filed an appeal on his behalf. The district court concluded, without holding an evidentiary hearing, Trinidad failed to demonstrate good cause because waiting “almost two years” after his judgment of conviction was filed to file his postconviction petition was not reasonable even if he believed counsel had filed an appeal on his behalf.

We disagree. Filing a petition 19 months after his judgment of conviction was filed might not have been unreasonable when Trinidad claimed he asked counsel to file an appeal and he believed an appeal was pending. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we reverse the district court’s order denying the petition and remand this matter to hold an evidentiary hearing to determine whether Trinidad asked counsel to file an appeal on his behalf. *See Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011) (“counsel has a duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction”); *see also Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (to warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Manuel Trinidad
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The district court may exercise its discretion to appoint postconviction counsel to assist Trinidad with the evidentiary hearing. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 761 (2017) (clarifying the factors a district court should consider when deciding whether to appoint postconviction counsel).

This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.