

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIYACTE HARRIS, A/K/A TIYACATE
REGENE HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72327

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Tiyacte Harris appeals from an order of the district court denying his December 14, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Harris filed his petition three years after entry of the judgment of conviction on December 17, 2013. No direct appeal was taken. Harris' 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); *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

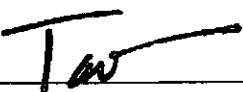
Harris claims ineffective assistance of counsel constituted good cause to overcome the procedural time bar. Specifically, he claims counsel's failure to provide him with a postconviction packet prevented him from filing a timely postconviction petition for a writ of habeas corpus. However, Harris did file a first, timely postconviction petition for a writ of habeas

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

corpus.² Harris' claim is thus belied by the record. Accordingly, Harris failed to demonstrate good cause to overcome the procedural bar. See *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503 (2003). We therefore conclude the district court did not err in denying Harris' petition as procedurally barred. And for the same reasons, we cannot conclude the district court erred in denying Harris' motion for discovery insofar as it applies to this procedurally barred petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²Although the district court orally denied the petition, it has never filed a written order finally disposing of it. Accordingly, Harris may still timely appeal that decision. See NRS 34.575(1) (“[T]he appeal must be made within 30 days after service by the court of written notice of entry of the order.”). We note that, while the district court commented the petition was not in the form proscribed by NRS 34.735, the district court did not indicate this was an impediment to deciding the petition on the merits.

³We conclude the district court did not abuse its discretion by declining to appoint counsel to represent Harris in litigating this untimely petition. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

cc: Hon. Douglas W. Herndon, District Judge
Tiyacte Harris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk