

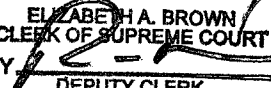
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 74985

FILED

OCT 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Trinidad filed his petition on May 16, 2016, more than one year after entry of the judgment of conviction on October 21, 2014.¹ 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.*

Trinidad claimed he had good cause to overcome the procedural time bar because he asked his counsel to pursue a direct appeal on his behalf and he filed his petition within a reasonable time of learning that counsel had not filed a notice of appeal. The Nevada Supreme Court has held that an appeal-deprivation claim may in certain circumstances provide good cause to excuse the filing of an untimely petition. *See Hathaway v. State,*

¹Trinidad did not pursue a direct appeal.

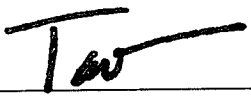
119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003). In order to demonstrate cause for the delay, a petitioner must demonstrate he actually believed trial counsel had filed an appeal, the belief was objectively reasonable, and he filed a postconviction petition within a reasonable time after learning that a direct appeal had not been pursued. *Id.* at 255, 71 P.3d at 508. We review a district court's good-cause determination de novo, and give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *See State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

At the evidentiary hearing, both Trinidad and his counsel testified that Trinidad had not asked counsel to pursue a direct appeal. Based on this testimony, the district court found Trinidad had not requested a direct appeal and substantial evidence supports that finding. The district court further concluded Trinidad did not otherwise express the type of dissatisfaction with his conviction that would have required counsel to file a notice of appeal. *See Toston v. State*, 127 Nev. 971, 979, 267 P.3d 795, 801 (2011). In addition, Trinidad testified he believed his counsel would file a notice of appeal even though he had not asked counsel to do so because a fellow inmate told him that is what defense attorneys normally do. Trinidad's belief that counsel would pursue a direct appeal even though he had not indicated he wished counsel to do so was not an objectively reasonable belief. *See id.* (explaining the defendant has the burden to indicate his desire to pursue a direct appeal). Given the record before this court, we conclude the district court properly concluded Trinidad did not

demonstrate he had cause to excuse the delay. Therefore, the district court properly denied the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Brian S. Rutledge
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk