

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JANET RUTH HILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74833

FILED

OCT 25 2018

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

ORDER OF AFFIRMANCE

Janet Ruth Hiller appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 13, 2017.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Hiller filed her petition more than one year after issuance of the remittitur on direct appeal on August 22, 2016. *See Hiller v. State*, Docket No. 68897 (Order of Affirmance, July 26, 2016). Hiller's 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).

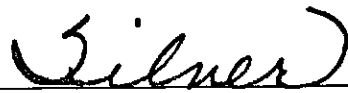
Hiller argued she had good cause because, between November 2016 and March 2017, she repeatedly called her appellate counsel's office to learn the status of her direct appeal and was told every time that no decision had been entered. She claimed she only learned through other means on July 2, 2017, that her remittitur had issued the previous August.


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

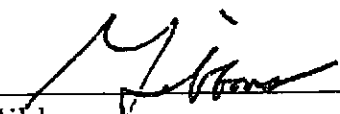
Hiller alleged sufficient facts that, if true and not belied by the record, demonstrate cause for the delay. Naturally and reasonably, a petitioner is not likely to pursue postconviction relief while she believes her direct appeal is pending. *See Hathaway v. State*, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003). And Hiller filed her petition within a reasonable time of learning her appeal had been denied.

However, Hiller's bare claims failed to "show that errors in the proceedings underlying the judgment worked to [her] actual and substantial disadvantage." *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). She thus failed to demonstrate undue prejudice. Accordingly, we conclude the district court did not err by denying her claim as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See NRS 34.750(1); Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

cc: Hon. Linda Marie Bell, Chief Judge.
Janet Ruth Hiller
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk