

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHELLY J. NEWTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78413-COA

FILED

NOV 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Shelly J. Newton 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.

In her October 4, 2018, petition, Newton appeared to first claim her escape conviction was improper because she was not ultimately convicted of any of the charges for which she was in custody when she committed that offense. Next, Newton appeared to claim there was insufficient evidence presented at the preliminary hearing and the State should have had to proceed by way of indictment. Finally, Newton appeared to claim she suffered from a violation of her right to a speedy trial. These claims could have been pursued in a direct appeal and Newton did not demonstrate good cause for her failure to do so.¹ See NRS 34.810(1)(b)(2);

¹Newton wrote in her petition that she did not pursue a direct appeal because someone told her the public defender would automatically pursue an appeal. To the extent Newton claimed this information was good cause for failing to raise her claims in a direct appeal, she was not entitled to relief. "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal," *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660

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Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1999) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Therefore, the district court did not err by denying Newton’s petition.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Shelly J. Newton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

(1999), and Newton did not allege she indicated to her counsel that she wished to pursue a direct appeal. Therefore, Newton’s appeal-deprivation claim failed to demonstrate good cause.

²The district court denied Newton’s claims on the merits. However, the district court should have applied the procedural bar at NRS 34.810(1)(b)(2). *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.”). Nevertheless, because the district court properly denied relief, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).