

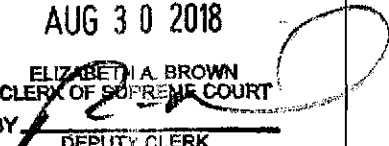
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY LEE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74360

FILED

AUG 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Henry Lee Johnson appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 26, 2017.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Johnson did not file a direct appeal and his habeas petition was filed more than three years after the entry of his judgment of conviction on August 30, 2013; consequently, it was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). Johnson claims he has good cause because he reasonably believed defense counsel had filed a direct appeal.


We review a district court's good-cause determination de novo, giving deference to the district court's factual findings if they are supported by substantial evidence and not clearly wrong. *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). An appeal-deprivation claim may provide good cause to excuse an untimely petition if "the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a

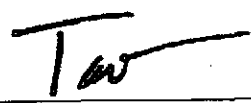
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

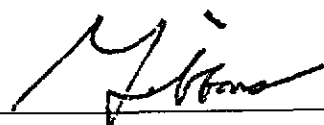
habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed.” *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003).

The district court conducted an evidentiary hearing and found that Johnson knew by May 2014 that an appeal had not been filed, he waited until April 2017 to file the instant petition, and he was unable to explain the nearly three-year delay in filing the instant petition. The record demonstrates the district court’s factual findings are supported by substantial evidence and are not clearly wrong, and we conclude Johnson failed to establish good cause to overcome the procedural bar. *See State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (petitioner bears the burden of pleading and proving specific facts that establish good cause and prejudice to overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Henry Lee Johnson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk