

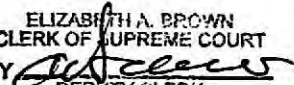
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TABUTA EUGENE JOHNSON, A/K/A  
TABUDAH EUGENE HUMES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80648-COA

**FILED**

NOV 23 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Tabuta Eugene Johnson appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 13, 2019. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Johnson's petition was filed more than three years after the remittitur on direct appeal was issued on August 24, 2015.<sup>1</sup> Consequently, his petition 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 argued he had good cause to excuse the procedural defect because the Eighth Judicial District Court Clerk's Office mistakenly forwarded his first habeas petition to the Nevada Supreme Court, he believed that the petition had been filed in the Eighth Judicial District Court, and he filed the instant petition after he learned of the clerical error.

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<sup>1</sup>*See Johnson v. State*, 131 Nev. 567, 354 P.3d 667 (Ct. App. 2015).

The district court made the following findings. Johnson addressed his first postconviction habeas petition to Tracie Lindeman, who was the Clerk of the Nevada Supreme Court. The Nevada Supreme Court entered an order denying the first petition because it was not filed in the district court in the first instance.<sup>2</sup> Johnson filed the instant petition more than more two years after the Nevada Supreme Court denied his first petition. Johnson did not explain why he ignored the Nevada Supreme Court order denying his first petition. And Johnson was solely responsible for the untimeliness of the instant petition.

The record on appeal supports the district court's findings, and we conclude the district court did not err by denying Johnson's untimely postconviction habeas petition. *See* NRS 34.726(1); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>2</sup>*See Johnson v. State*, Docket No. 71064 (Order Denying Petition, October 13, 2016).

<sup>3</sup>To the extent Johnson claims the district court erred by denying his petition without an evidentiary hearing, we conclude he failed to demonstrate he was entitled to an evidentiary hearing. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008).

cc: Hon. Carolyn Ellsworth, District Judge  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk