

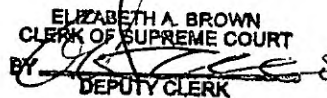
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT DOUGLAS PETERSON,  
Appellant,  
vs.  
TIM GARRETT, WARDEN,  
Respondent.

No. 85274-COA

FILED

AUG 29 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Douglas Peterson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 26, 2021. Eleventh Judicial District Court, Mineral County; Jim C. Shirley, Judge.

Peterson argues the district court erred by denying his petition as procedurally time-barred. Peterson filed his petition nearly four years after entry of the judgment of conviction on February 14, 2017.<sup>1</sup> Thus, Peterson's petition was untimely filed. *See* NRS 34.726(1). Peterson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Both in his petition below and on appeal, Peterson argues that he has good cause to overcome the procedural time-bar because he told counsel to file an appeal and counsel failed to do so. A petitioner may establish good cause for the delay in filing a petition “if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a

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<sup>1</sup>Peterson did not file a direct appeal.

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). Peterson has failed to allege when he learned that an appeal had not been filed and, in turn, that he filed his petition within a reasonable time after learning about the lack of appeal. Thus, he has failed to support his claim with specific factual allegations that demonstrate good cause. *See Rippo v. State*, 134 Nev. 411, 417, 423 P.3d 1084, 1093 (2018). Therefore, we conclude the district court did not err by denying this claim.

Peterson also argues on appeal that the district court erred by denying his “motion to continue oral arguments and leave to submit additional briefing,” which was filed three days before the hearing Peterson sought to have continued. “This court reviews the district court’s decision regarding a motion for continuance for an abuse of discretion.” *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007).

Peterson failed to provide this court with a sufficient record on appeal. Peterson failed to provide this court with a copy of his motion. Peterson also failed to provide this court with a certified transcript of the hearing on his motion and instead only provided an unfiled, uncertified transcript of the hearing. This was improper, *see* NRAP 9(a)(4), (c)(1)(A), and we decline to consider the uncertified transcript, *see* NRAP 9(a)(7).<sup>2</sup> “The burden to make a proper appellate record rests on appellant,” *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); *accord* NRAP 30(b)(3), and we presume that the missing portions of the record support the district court’s decision, *see Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.* 123 Nev. 598,

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<sup>2</sup>We note that the unfiled uncertified transcript of the hearing that was provided is incomprehensible at times because the transcript reflects that most of it is “inaudible.”

603, 172 P.3d 131, 135 (2007) (stating “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”). Accordingly, we cannot conclude the district court erred by denying Peterson’s motion to continue and for additional briefing. Therefore, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Jim C. Shirley, District Judge  
TCM Law  
Attorney General/Carson City  
Mineral County District Attorney  
Clerk of the Court/Court Administrator