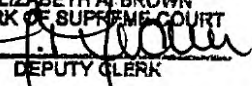


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALD LEE WHATLEY, JR.,
Appellant,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 86185-COA

FILED
NOV 07 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DIRECTING RESPONSE

Gerald Lee Whatley, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Based on our review of the record filed on appeal, we conclude a response is warranted. *See* NRAP 46A(c).


Accordingly, the State, as real party in interest, on behalf of respondent, shall have 30 days from the date of this order to file and serve a response, including points and authorities. The State should focus on Whatley's claim that counsel was ineffective for failing to file a timely notice of appeal. Specifically, the State should address whether the district court erred by denying, solely based on Whatley's failure to demonstrate prejudice, his claim that counsel was ineffective for failing to file a timely notice of appeal. *See Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795, 799 (2011). The State should also consider that courts may take judicial notice that on August 18, 2022, appellate counsel filed a declaration in response to an order to show cause issued in *Whatley v. State*, Docket No. 85077, in which counsel explains that the late filing of the notice of appeal was the

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result of a miscommunication between appellate attorneys. *See Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (stating this court “may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not”); *see also* NRS 47.150(1) (a judge or court may take judicial notice, whether requested or not).

The response shall comply with NRAP 28 and NRAP 32. Appellant shall have 15 days from the date of the response to file a reply. *See* NRAP 28(k). For the purposes of NRAP 28(e), the response and reply shall cite to the record on appeal transmitted by the district court clerk.

It is so ORDERED.


_____, C.J.
Gibbons

cc: Gerald Lee Whatley, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk