

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY LOUIS REPMAN, JR.,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
CRAIG FARWELL,
Respondent.

No. 43130

FILED

SEP 15 2004

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On March 1, 2002, appellant Larry Louis Repman, Jr., was convicted, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. The district court sentenced Repman to serve a prison term of 10 to 25 years. Repman appealed, and this court affirmed the judgment of conviction.¹ The remittitur issued on October 8, 2002.

On October 8, 2003, the district court received Repman's proper person post-conviction petition, but did not file it because the petition did not have an original signature. Instead, on October 9, 2003, the Lyon County Clerk returned the petition to Repman, explaining that a petition bearing an original signature was required before the document could be filed. Repman resubmitted the petition with an original signature, and the petition was filed on October 17, 2003. On December 1,

¹Repman v. State, Docket No. 39370 (Order of Affirmance, September 12, 2002).

2003, the State filed a motion to dismiss the petition, arguing that it was untimely and procedurally barred. The district court appointed counsel to represent Repman, and counsel filed an opposition to the motion to dismiss. On March 9, 2004, the district court granted the State's motion and dismissed the petition. Repman filed the instant appeal.

Our review of the record indicates that the district court erred in dismissing Repman's petition as procedurally barred because the petition was timely. NRS 34.726(1) provides that a post-conviction habeas petition "must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the supreme court issues its remittitur." In this case, this court issued its remittitur in the direct appeal on October 8, 2002. Repman's post-conviction habeas petition was received by the district court exactly one-year later, on October 8, 2003. Although the post-conviction habeas petition was not filed by the district court until approximately one week later, we conclude that the requirements of NRS 34.726(1) were satisfied because the document was received within the one-year time period.² Therefore, we conclude that district court erred in refusing to consider the substance of Repman's claims because the petition was timely and not procedurally barred.

Having concluded that the district court erred in ruling the petition was untimely, we

²See generally Huebner v. State, 107 Nev. 328, 810 P.2d 1209 (1991) (recognizing the importance of the receipt date of a document in determining the jurisdiction of the court); Miles v. State, 120 Nev. ___, 91 P.3d 588 (2004) (concluding that technical defects in a post-conviction habeas petition do not deprive the district court of jurisdiction).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Robert E. Estes, District Judge
Rick Lawton
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk