

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD WILLIAM SHERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47012

FILED

JAN 09 2007

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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Donald William Sherman was convicted, pursuant to a jury verdict, of burglary, robbery, and first-degree murder and sentenced to death. This court affirmed the judgment of conviction and sentence on direct appeal.¹ This court also affirmed the district court's denial of Sherman's first post-conviction petition for a writ of habeas corpus.² Christopher Oram represented Sherman in that appeal and remained as counsel of record in that matter.

Sherman, represented by the Federal Public Defender, filed a second post-conviction petition for a writ of habeas corpus on December

¹Sherman v. State, 114 Nev. 998, 965 P.2d 903 (1998).

²Sherman v. State, Docket No. 37191 (Order of Affirmance, July 9, 2002).

12, 2005. The district court denied the petition without prejudice, ruling that Mr. Oram was counsel of record and the Federal Public Defender needed to obtain a substitution of counsel and refile the petition. This appeal followed.

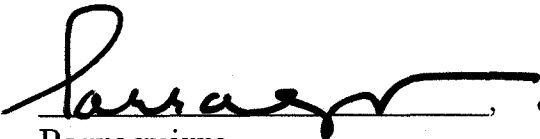
We conclude that the district court erred in denying the petition on these grounds. Mr. Oram's representation of Sherman was specific to the previous matter. The instant petition was a new and different matter, and Mr. Oram was not counsel of record for the petition. Further, had a substitution of counsel been necessary, it would have been a technical defect in the petition that did not deprive the district court of jurisdiction to hear the matter after a substitution had been filed. A district court should allow a petitioner to cure a technical defect rather than dismissing or denying the petition.³

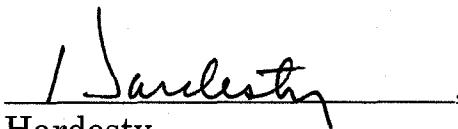
The States also argues that we should consider this appeal moot because Sherman has been permitted to refile his petition. We are not persuaded by this argument given the possibility that dismissal of the instant petition could independently give rise to issues of procedural default.

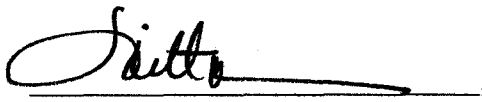
Having reviewed Sherman's contentions and concluded he is entitled to relief, we

³Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004) (holding that an inadequate verification of a petition for a writ of habeas corpus is an amendable rather than jurisdictional defect that the district court should allow the petitioner to cure).

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

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Valorie Vega, District Judge
Federal Public Defender/Las Vegas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk