

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT DEMETRIUS AGUILAR,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE,
Respondent.

No. 48815

FILED

APR 16 2007

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

ORDER GRANTING PETITION

This is a proper person petition for a writ of mandamus in which Aguilar challenges the district court's decision to take his post-conviction petition for a writ of habeas corpus off calendar.

Aguilar asserts that he filed a proper person post-conviction petition for a writ of habeas corpus in the district court on September 8, 2000. Aguilar further asserts that on December 6, 2000, Judge Donald Mosley took the petition off calendar without resolving the petition. The December 6, 2000 minutes specifically state:

The Court stated Mr. Hillman [former trial counsel] was going to discuss waiving the attorney/client privilege with defendants. COURT

ORDERED, OFF CALENDAR; counsel to contact
Chambers to re-calendar.¹

In the instant petition, Aguilar seeks, among other things, an order compelling the district court to place his petition back on calendar and to resolve the petition.

The district court may not resolve a post-conviction petition for a writ of habeas corpus by simply taking the petition off calendar. A decision taking the petition off calendar is not a final decision as the district court retains the jurisdiction to place the petition back on calendar for review, and there is no authority in NRS chapter 34 allowing the district court to take a petition off calendar in lieu of resolving the petition on the merits or other procedural grounds. NRS 34.740 requires the district court to provide an expeditious examination of a post-conviction petition for a writ of habeas corpus. NRS 34.830 further provides that any final order that disposes of a post-conviction petition for a writ of habeas corpus must contain specific findings of fact and conclusions of law and that service of notice of entry of the order be performed by the clerk of the district court. NRAP 4(b)(2) requires the district court to enter any order finally resolving a post-conviction petition for a writ of habeas corpus within 20 days of the district court's oral pronouncement of a final

¹It appears that Aguilar's co-defendant, and brother, Dayomashell Aguilar also filed a post-conviction petition for a writ of habeas corpus and that his petition was also taken off calendar on December 6, 2000.

decision. Aguilar may not file an appeal to this court unless the district court has entered a final decision on the petition.² This court notes Aguilar would have necessarily waived any attorney/client privilege in raising claims of ineffective assistance of counsel.³

Because it appeared that Aguilar had set forth an issue of arguable merit and that there may be no plain, speedy and adequate remedy in the ordinary course of the law, this court directed the State, on behalf of the district court, to show cause why the writ should not issue directing the district court to place the petition back on calendar for resolution. The State was also to inform this court in its response whether Dayomashell Aguilar's petition remained pending in the district court.

The State filed a timely response indicating that both petitions remained pending and that it did not oppose issuance of a writ of mandamus in the instant case directing the district court to resolve the petitions of both Gilbert and Dayomashell Aguilar.⁴ Accordingly, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

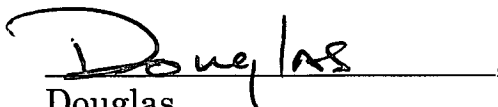
²See NRS 34.575; NRAP 4(b)(1).

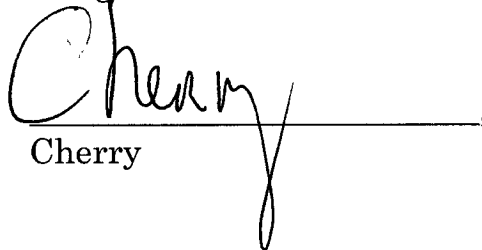
³See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

⁴Although Dayomashell Aguilar was not a party to the instant petition, in the interests of judicial economy, we conclude that Dayomashell Aguilar's petition shall likewise be placed on calendar for resolution.

district court to place the petitions of both Gilbert and Dayomashell Aguilar on calendar for resolution within a reasonable time period from issuance of the writ of mandamus.⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Donald M. Mosley, District Judge
Gilbert Demetrius Aguilar
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵We have considered all proper person documents submitted in this matter, and we conclude that only the relief set forth above is warranted.