

IN THE SUPREME COURT OF THE STATE OF NEVADA

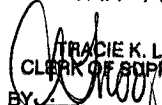
JAMES VANCE WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49829

FILED

JAN 15 2008

ORDER OF REVERSAL AND REMAND

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On March 31, 2004, the district court convicted appellant, pursuant to a guilty plea, of three counts of possession of stolen property. The district court sentenced appellant to serve three consecutive terms of 24 to 60 months in the Nevada State Prison. Appellant was further ordered to pay \$375 in restitution. The district court ordered the sentences to run concurrently with the sentence in district court case number C139695. On June 14, 2004, the district court corrected the judgment of conviction to impose the sentences in the instant case to run consecutively to the sentence in district court case number C139695. On direct appeal, this court affirmed the judgment of conviction in part, but vacated the restitution order and remanded for further proceedings to

determine the proper amount of restitution.¹ The remittitur issued on August 17, 2004. The district court entered an amended corrected judgment of conviction on August 27, 2004.

On April 20, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to assist appellant. On October 3, 2005, appellant, through his post-conviction counsel, filed a notice of withdrawal of the petition. Attached to the notice was appellant's handwritten note that he understood the consequences of withdrawing the petition, including that he could not raise the same claims again. However, no written order memorializing a decision to grant withdrawal of the petition was entered by the district court.

On March 1, 2006, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 2, 2007, the district court denied appellant's petition. This appeal followed.

The district court denied the March 1, 2006 petition as violative of NRS 34.810(2) because appellant raised the same claims as those raised in his first post-conviction petition for a writ of habeas corpus.

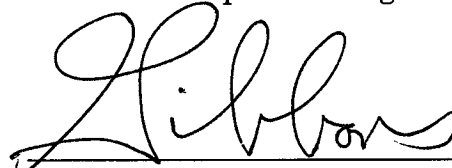
¹Williams v. State, Docket No. 43122 (Order Affirming in Part, Vacating in Part, and Remanding, July 23, 2004).

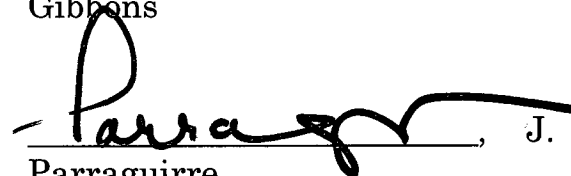
Based upon our review of the record on appeal, we conclude that the district court erred in denying appellant's petition. NRS 34.810(2), in pertinent part, provides that "a second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits." However, as stated earlier, the district court never entered a written order granting the withdrawal of the first petition; the district court may not resolve a second or successive petition without first entering an order regarding the first petition. Further, even assuming that the district court had determined to grant the withdrawal of the petition, appellant's March 1, 2006 petition was not violative of NRS 34.810(2) because a decision to grant the withdrawal of the first petition would not have been a decision on the "merits." Although appellant's March 1, 2006 petition appears to have violated NRS 34.726(1), the district court was required to formally resolve the first petition prior to a decision on the second, untimely petition. Therefore, we reverse the decision of the district court and remand this matter to the district court for further proceedings.

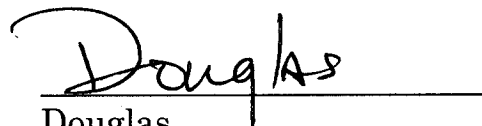
Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.² Accordingly, we

²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.³


_____, C.J.
Gibbons


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Robert H. Perry, District Judge
James Vance Williams
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³This order constitutes our final disposition of this appeal. Any
subsequent appeal shall be docketed as a new matter.