

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID RODRIGUES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51224

FILED

OCT 03 2008

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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; Steven P. Elliott, Judge.

On January 26, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on April 3, 2007.

On November 30, 2007, appellant filed a proper person document labeled "motion for post-conviction [remedy] under 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. The district court treated appellant's

¹Rodrigues v. State, Docket No. 46745 (Order of Affirmance, March 8, 2007)

motion as a post-conviction petition for a writ of habeas corpus, and on January 14, 2008, the district court denied appellant's motion. This appeal followed.

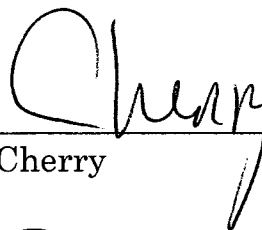
The district court denied the motion on the basis that the petition was not in the proper form and failed to meet statutory requirements. Although the district court was correct that the motion was not in substantial compliance with NRS 34.735, we conclude that the district court erred in denying the petition. In Miles v. State,² this court held that inadequate verification of a petition was not a jurisdictional defect and that a petitioner may cure a nonjurisdictional defect by filing an amended petition. The failure to file a petition in substantial compliance with NRS 34.735 is a curable defect, and thus, appellant should be permitted an opportunity to file an amended petition in the district court curing his defect in form. Because the district court denied the petition without any reference to whether the denial was with or without prejudice, we cannot affirm the order of the district court. Therefore, we reverse and remand the matter for the district court to permit appellant to file an amended petition curing the defects.³


²120 Nev. 383, 387, 91 P.3d 588, 590 (2004).


³We note that the amended petition would relate back to the filing date of November 30, 2007. We further note that the district court may refuse to allow a request to file a supplemental petition that adds additional substantive claims.

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.⁴ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. Steven P. Elliott, District Judge
David Rodrigues
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.