

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY THOMAS BOLDEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51957

**FILED**

DEC 18 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On April 21, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus challenging the computation of time served. On June 13, 2008, the State filed a motion to dismiss the petition. On June 26, 2008, appellant filed a response to the motion to dismiss. Attached to appellant's response was an amended petition. The district court orally dismissed the petition on June 23, 2008, and a written order was filed on August 4, 2008. This appeal followed.

The district court dismissed the petition on the grounds that it was not served on the Attorney General's Office or the warden of his facility and that it was not in the proper form.

Preliminarily, we note that the district court prematurely considered and dismissed the petition. NRS 34.750(4) provides that a petitioner has 15 days from the date of service of a motion to dismiss to file a response. The district court's hearing on the petition was conducted 10

days after the motion to dismiss was filed in the district court. Although appellant filed a timely response to the motion to dismiss, appellant's response to the petition was not considered by the district court.

Further, although the district court correctly observed that the original petition was not served on the proper parties and was not in substantial compliance with the form set forth in NRS 34.735, those defects were curable. In Miles v. State,<sup>1</sup> 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.<sup>2</sup> The failure to file a petition in substantial compliance with NRS 34.735 is a curable defect, and thus, appellant should have been permitted an opportunity to file an amended petition in the district court curing his defect in form. Further, appellant should have been able to cure the defect in service by serving the petition on the proper parties.

In fact, the record on appeal indicates that appellant did just that. As noted above, appellant filed a response to the motion to dismiss and attached to the response an amended petition. The amended petition utilizes the form petition required by NRS 34.735 and contains a certificate of service noting that the Attorney General's Office and the warden of his facility had been served by mail.

Therefore, we conclude that the district court erred in dismissing the petition before considering appellant's response and after

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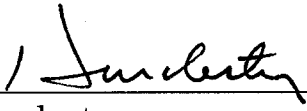
<sup>1</sup>120 Nev. 383, 91 P.3d 588 (2004).

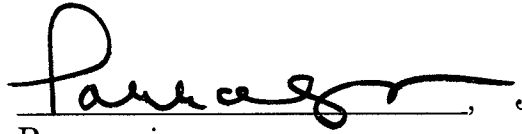
<sup>2</sup>Id. at 387, 91 P.3d at 590.

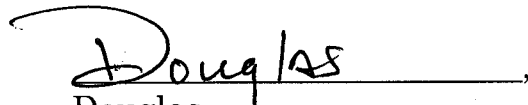
appellant had cured the defects to his petition. We reverse the order of the district court and remand for consideration of the petition on the merits.

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.<sup>3</sup> Accordingly, we

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

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Anthony Thomas Bolden  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).