

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EDWARD WILLIAMS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52232

FILED

JUN 04 2009
TRACIEK LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On March 24, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of 24 to 120 months in the Nevada State Prison. No direct appeal was taken.

On April 29, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 August 13, 2008, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant challenged the computation of time served. Appellant appeared to claim that the Department of Corrections improperly calculated statutory good time credits.

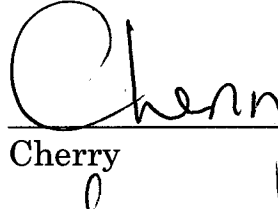
The district court denied the petition on the basis that the petition was not in the proper form and failed to properly serve the

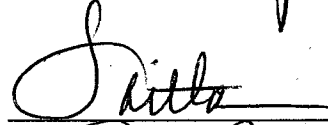
petition on the attorney general. Although the district court was correct that the petition was not in substantial compliance with NRS 34.735 and not properly served on the attorney general, we conclude that the district court erred in denying the petition. In Miles v. State, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004), 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 34.735 and failure to serve the petition on the attorney general is a curable defect, and thus, appellant should be permitted an opportunity to file an amended petition within a reasonable time period in the district court curing his defects. 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.¹

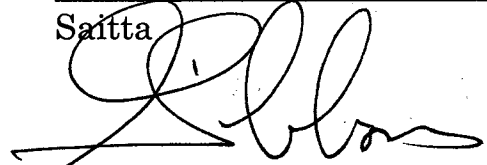
Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

¹We note that the amended petition would relate back to the filing date of April 29, 2008. We further note that the district court may refuse to allow a request to file a supplemental petition that adds additional substantive claims and may set a reasonable time period to amend the defects. See generally NRS 34.750(3) (providing 30 days when counsel is appointed to supplement a petition).

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


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jennifer Togliatti, District Judge
John Edward Williams, Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk