

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY ORMOND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52522

FILED

APR 14 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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; Kenneth C. Cory, Judge.

On June 10, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a response. On July 17, 2008, appellant filed a second petition in an apparent attempt to supplement and cure defects in the form of the first petition. The State opposed the petition. On November 25, 2008, the district court dismissed the petition.¹ This appeal followed.

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

¹Although the minutes indicate that the attorney general was to prepare an order dismissing the petition without prejudice, the order prepared by the attorney general and signed by the district court failed to include language that the dismissal was without prejudice.

The district court dismissed the petition because the petition was filed in the original case relating to the underlying criminal case and not as a separate case. We conclude that the district court erred in relying on this ground in dismissing the petition. Although NRS 34.730 provides that a petition that challenges the computation of time served should be filed as a separate action, it is the responsibility of the clerk of the district court to file the petition as a separate action. NRS 34.730(3) (providing in pertinent part “the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had”).

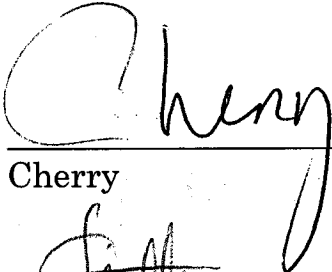
The district court further dismissed the petition because appellant had not served the petition on the warden and was not in the proper form. Any defects in the filing of the petition were curable defects and did not necessitate the dismissal of the petition. See Miles v. State, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (holding that an inadequate verification of a petition for a writ of habeas corpus is an amendable rather than jurisdictional defect that the district court should allow the petitioner to cure). Further, the second petition filed on July 17, 2008, did utilize the form require by NRS 34.735. A certificate of service attached to that petition indicates that the petition was served on the warden. Thus, this was not a proper ground for dismissal of the petition.

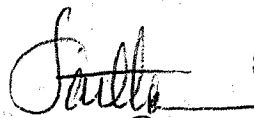
Accordingly, we reverse the order of the district court and remand this matter to allow for the correction of any further procedural defects and consideration of the petition.


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

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. Kenneth C. Cory, District Judge
Rodney Lee Ormond
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk