

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL THOMAS DAVITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53116

**FILED**

JAN 07 2010

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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Because appellant's petition did not challenge the validity of his judgment of conviction or sentence, but rather challenged the computation of time served, the petition was required to be filed in the district court in the county in which he is incarcerated—the Seventh Judicial District Court. See NRS 34.738(1). Appellant filed his petition in the district court for the county in which he was convicted—the Eighth Judicial District Court. Thus, appellant filed his petition in the wrong district court, and for this reason, NRS 34.738(2)(b) requires the district court to transfer a petition that is filed in the wrong district court to the appropriate district court. Therefore, we direct the clerk of the Eighth Judicial District Court to transfer appellant's petition, filed on August 14, 2008, to the clerk of the Seventh Judicial District Court if the clerk has not already done so. Accordingly, we

ORDER the judgment of the district court REVERSED and REMANDED and direct the clerk of the district court to transfer the petition, if the district court clerk has not already done so.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Donald M. Mosley, District Judge  
Michael Thomas Davitt  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk