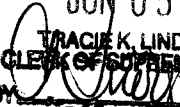


IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ANTONETTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53197

FILED

JUN 05 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 denying a second post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On February 27, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, and one count of possession of a firearm by an ex-felon.¹ The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole for the murder count, two consecutive terms of 96 to 240 months for the attempted murder count, and a term of 28 to 72 months for the possession count. The terms between the counts were imposed to run consecutively. This court affirmed the judgment of conviction on appeal. Antonetti v.

¹These charges related to offenses committed against Daniel Stewart and Mary Amina.

State, Docket No. 42917 (Order of Affirmance, December 20, 2005). The remittitur issued on March 14, 2006.

On December 3, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon.² The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison. The district court further ordered that this sentence would run consecutively to all other terms imposed. This court affirmed the judgment of conviction on direct appeal. Antonetti v. State, Docket No. 43221 (Order of Affirmance, December 20, 2005). The remittitur issued on January 17, 2006.

On October 23, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent appellant in the post-conviction proceedings.³ No decision has been made on this petition because post-conviction counsel sought extensions to file a supplemental brief.

On September 23, 2008, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On January 21, 2009, the district court denied the 2008 petition. This appeal followed.

²This charge related to the offense committed against Suzanne Smith.

³Brent Percival was appointed on January 30, 2008, and confirmed as counsel on February 6, 2008.

The district court denied the 2008 petition because the petition did not contain a reference to the first petition in violation of NRS 34.810(4), which permits the district court to dismiss a petition that fails to include any prior proceedings. Further, the district court noted that appellant was represented by counsel at the time he filed the 2008 petition and did not serve a copy of that petition on the district attorney's office.

Based upon our review of the record on appeal, we conclude that the district court erred in denying appellant's petition. The district court may not resolve a second or successive petition without first entering an order regarding the first petition. Further, the failure to serve a copy of the petition on the district attorney's office is a curable defect. Miles v. State, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004). Finally, the fact of the bifurcated trials appears to be the reason for two petitions, and thus, the district court's reliance on NRS 34.810(4) is misplaced in the instant case. The 2008 petition contains a statement that it relates to the charge and trial involving Suzanne Smith whereas the 2006 petition appeared to relate to the first trial involving the offenses against Daniel Stewart and Mary Amina.⁴ In view of these circumstances, we reverse the denial of the

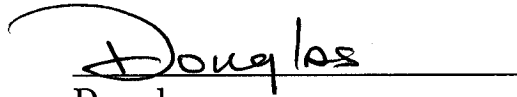
⁴We acknowledge that nothing would require the 2006 petition to be limited to the charges involving Daniel Stewart and Mary Amina. However, we note that once the district court severed the charges, the court treated the charges involving Daniel Stewart and Mary Amina separately from the charge involving Suzanne Smith. In fact, two separate judgments of conviction were entered as indicated in the recitation of the procedural history of this case in the district court. This may explain some of the confusion in the post-conviction proceedings. Thus, the fact that post-conviction counsel has been appointed for the 2006 petition may not be an appropriate reason to deny the 2008 petition.

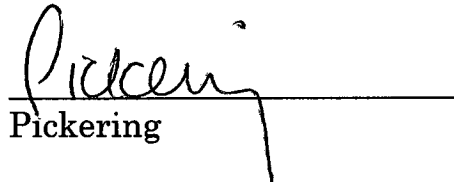
2008 petition and remand for the district court to consider the 2008 petition after the resolution of the first petition.⁵

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. 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.⁶


Parraguirre, J.


Douglas, J.


Pickering, J.

⁵We express no opinion as to whether the 2008 petition is procedurally barred in the instant case, and the district court may consider the applicable procedural bars when resolving the 2008 petition.

⁶We 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.

cc: Hon. Kenneth C. Cory, District Judge
Joseph Antonetti
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk