

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SOUND O'NEILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57911

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court “striking” a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

In his August 24, 2010, petition, appellant claimed that he received ineffective assistance of trial counsel. The district court struck appellant’s petition on the ground that appellant was already represented by counsel and concluded that the district court’s rules therefore prevented it from considering appellant’s proper person filings. The district court was in error.

The district court may not dispose of a petition by striking it. Rather, NRS Chapter 34 provides for disposing of a petition either through dismissing it summarily, see NRS 34.726(1); NRS 34.738(3); NRS 34.800; NRS 34.810, or after an evidentiary hearing, see NRS 34.770. Neither NRS Chapter 34 nor the Nevada Rules of Civil Procedure nor local court

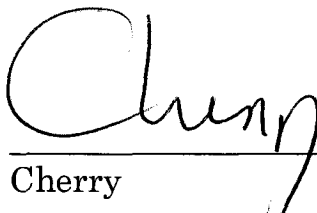
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


rules provide a means for striking a post-conviction petition for a writ of habeas corpus. Accordingly, we conclude that the district court was without authority to strike appellant's petition.

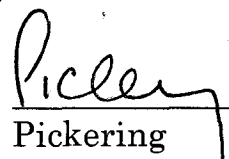
Even were this court to construe the district court's order as a dismissal, we must nevertheless reverse. The district court's statement that appellant is represented by counsel is belied by the record. The record indicates only that counsel was appointed to represent appellant on a previous post-conviction petition for a writ of habeas corpus filed on April 30, 2007. The petition was resolved and an appeal docketed before the second petition was filed. That appellant is represented by counsel in one post-conviction proceeding cannot serve as a basis to deny his petition in a separate proceeding. We therefore conclude the district court erred in striking appellant's petition on the grounds that he was represented by counsel.²

For the foregoing reasons, 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.
Gibbons


_____, J.
Pickering

²On remand, the district court may in its discretion appoint post-conviction counsel to represent appellant regarding the instant petition, NRS 34.750(1).

cc: Hon. Steven P. Elliott, District Judge
Christopher Sound O'Neill
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk