

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH CUNDIFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58744

FILED

NOV 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
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.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 11, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery. No direct appeal was taken.

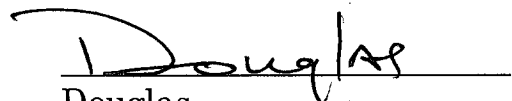
On March 15, 2009, appellant filed a proper person petition for a writ of habeas corpus. On June 24, 2009, appellant filed a second post-conviction petition for a writ of habeas corpus. Finally, on July 29, 2009, appellant filed an amended post-conviction petition for a writ of habeas corpus. The district court never decided any of these petitions and they remain pending in the district court.

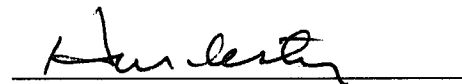
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

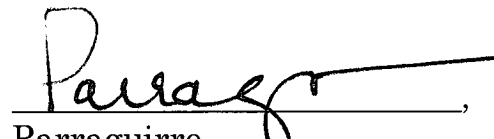
On May 26, 2011, appellant filed a third proper person post-conviction petition for a writ of habeas corpus. The district court summarily denied the petition as procedurally barred pursuant to NRS 34.726(1). This appeal followed.

Based upon our review of the record on appeal, we conclude that the district court erred in denying appellant's 2011 petition. The district court may not resolve a second or successive petition without first resolving the 2009 petitions. Therefore, we reverse the denial of the 2011 petition and remand for the district court to consider the 2011 petition after resolution of the 2009 petitions.² 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.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

²We express no opinion as to whether the 2011 petition is procedurally barred in the instant case, and the district court may consider the applicable procedural bars when resolving the 2011 petition.

cc: Hon. Michelle Leavitt, District Judge
William Joseph Cundiff
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk