

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY EUGENE HAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35517

FILED

APR 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On September 11, 1998, the district court convicted appellant, pursuant to a guilty plea, of two counts of felony burglary. The district court sentenced appellant to serve two consecutive terms of a maximum of ten years, with minimum parole eligibility in four years, in the Nevada State Prison. Appellant did not file a direct appeal.

On July 27, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The record on appeal does not show that this petition has been denied to date.

On December 21, 1999, appellant filed a proper person document labeled "petition for writ of habeas corpus and petition/motion for withdrawal of guilty plea" in the district court. The district court denied the petition portion of this

document one day later as untimely. Appellant now appeals from that order. The State did not oppose the habeas petition portion of the document but did oppose the motion for withdrawal of plea aspect of the document. On February 2, 2000, the district court denied the motion aspect of the document in a separate order. Appellant has not filed any notice of appeal from the February 2, 2000 order.

Our subsequent review of the record on appeal reveals that the district court erroneously treated appellant's "petition for writ of habeas corpus and petition/motion for withdrawal of guilty plea" as two separate documents. In fact, once appellant appealed to this court from the district court's denial of the habeas petition, the district court was divested of jurisdiction to consider the motion portion separately.¹ Thus, we treat appellant's document as one challenge.

Our preliminary review of the record on appeal revealed that the district court may have erred in denying the petition. The district court apparently has never resolved appellant's first timely petition. The district court's failure to resolve the first timely petition may be good cause to overcome the procedural infirmities of appellant's second petition.² Therefore, on February 13, 2001, we ordered the State to show cause why we should not remand this matter to the district court for further proceedings resolving both of


¹See *Rust v. Clark Cty. School District*, 103 Nev. 686, 747 P.2d 1380 (1987) (stating that a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court).


²See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


appellant's post-conviction habeas petitions. The State responded to our order on March 15, 2001, conceding that this case should be remanded to the district court.

Accordingly, we

ORDER³ the February 2, 2000 district court order denying appellant's motion VACATED, and the December 22, 1999 district court order denying appellant's petition REVERSED AND REMANDED to the district court for consideration of both the July 27, 1999 petition and the December 21, 1999 "petition for writ of habeas corpus and petition/motion for withdrawal of guilty plea."⁴


_____, J.
Young


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Ricky Eugene Hampton
Nye County Clerk

³This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

⁴We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.