

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELBERT SCOTT CAGLE,
Appellant,
vs.
WARDEN, HIGH DESERT STATE
PRISON, DWIGHT NEVEN,
Respondent.

No. 60332

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

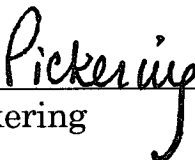
Appellant filed his petition on November 2, 2011, over one year after issuance of the remittitur on direct appeal on October 7, 2010. Cagle v. State, Docket No. 54153 (Order of Affirmance, September 10, 2010). Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause. See NRS 34.726(1). The district court summarily dismissed the petition as time-barred. However, it appears from the record that appellant may have submitted his habeas petition to the clerk of the district court in a timely fashion but the petition was returned to him unfiled. Because there was no response from the State and no evidentiary hearing on the timeliness of the petition, we

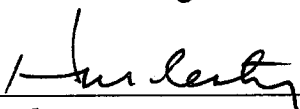
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

are unable to conclude that appellant's petition was procedurally time-barred. See id.; NRS 34.745(1)²; NRS 34.770(1); NRS 34.770(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.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Delbert Scott Cagle
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²NRS 34.745(1) provides that, for the first post-conviction petition, the district court "shall" order the district attorney to either file a response or answer to the petition or take other action deemed necessary by the court. While the statute expressly provides for the district court to summarily dismiss a second or successive petition if it plainly appears on the face of the petition that the petitioner is not entitled to relief, see NRS 34.745(4), no such exception exists for a first petition. Notably, no response was filed by the State in the instant case.