

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61916

**FILED**

**MAY 13 2013**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Angela  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order of the district court granting in part, denying in part, and dismissing in part, a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

First, appellant claimed that his good time credits were not being correctly calculated by the prison. This claim was improperly raised in a petition that also challenged the judgment of conviction. See NRS 34.738(3). We note that a challenge to the computation of time served must be filed in the county in which the petitioner is incarcerated. NRS

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<sup>1</sup>This 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).

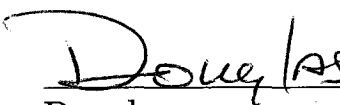
The district court granted appellant's request to remove him from the sex offender registry at the prison because registration was not required based on his offense. We note that the State has not appealed the portion of the petition that was granted.

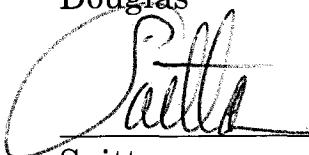
34.738(1). Therefore, the district court did not err in dismissing this claim without prejudice.

Second, appellant claimed that counsel was ineffective for failing to file an appeal on his behalf despite being requested to do so. We conclude that the district court erred in denying the petition without conducting an evidentiary hearing on the appeal-deprivation claim. Counsel has a duty to file a notice of appeal when requested to do so and prejudice may be presumed. *Toston v. State*, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 799-801 (2011). Because appellant's claim, which was not belied by the record, would have entitled him to relief if true, *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984), the district court should have held an evidentiary hearing on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Elissa F. Cadish, District Judge  
Charles Davis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk