

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CURTIS GIBBONS,  
Appellant,  
vs.  
DWIGHT NEVEN, WARDEN,  
Respondent.

No. 63841

**FILED**

NOV 13 2013

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

*ORDER OF REVERSAL AND REMAND*

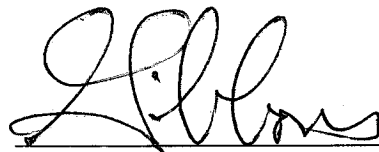
This is a proper person appeal from an order dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

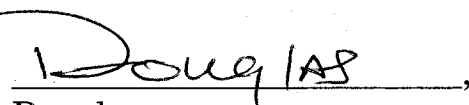
On August 4, 2011, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the computation of time served. In his petition, appellant challenged the forfeiture of credits as the result of prison disciplinary proceedings. On July 16, 2013, the district court dismissed the petition because no action had been taken on the petition pursuant to EDCR 2.90, a rule pertaining to the dismissal of a civil case in which no action had been taken.


We conclude that the district court erred in dismissing the petition pursuant to EDCR 2.90. NRS chapter 34 does not provide for the dismissal of a post-conviction petition for a writ of habeas corpus due to the failure of the petitioner to take further action after the filing of the petition. Rather NRS chapter 34 places the obligation on the district court to take the next action. First, NRS 34.740 provides that the district court shall expeditiously examine the petition. Next, NRS 34.745(2) provides that the district court shall order the attorney general to file an answer

and a return within 45 days or any longer period fixed by the judge.<sup>1</sup> After receipt of the return and the answer and all supporting documents, the district court must then determine whether an evidentiary hearing is required. See NRS 34.770(1). If an evidentiary hearing is not required, the district court shall deny the petition without a hearing.<sup>2</sup> See NRS 34.770(2). NRS 34.830(1) provides that any final order that resolves a post-conviction petition for a writ of habeas corpus contain specific findings of fact and conclusions of law supporting the decision of the district court. Habeas corpus cannot be characterized as civil or criminal for all purposes, thus, the specific requirements of NRS chapter 34 govern over the more general provision in EDCR 2.90. See *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

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

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

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

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<sup>1</sup>The district court may also order the attorney general to take any other action that the judge deems appropriate. NRS 34.745(2)(b).

<sup>2</sup>If an evidentiary hearing is required, the district court shall set the date for the hearing and transport the prisoner. See NRS 34.770(3).

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

cc: Hon. Allan R. Earl, District Judge  
Robert Curtis Gibbons  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk