

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTWANETTE DENISE DENNIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63846

**FILED**

OCT 16 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

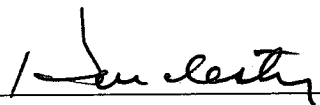
This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus without prejudice. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

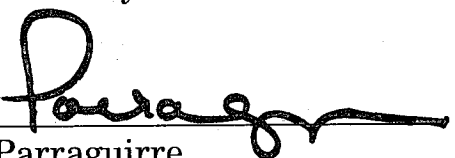
On August 28, 2013, the district court dismissed the petition in CR12P1151 because appellant had filed a direct appeal from the judgment and the district court believed the direct appeal was still pending in this court. The district court indicated that its jurisdiction was stayed during the pendency of the direct appeal.

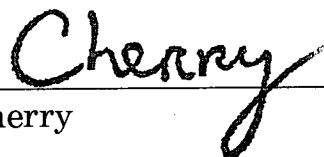
We conclude that the district court judge erred in concluding that he lacked jurisdiction to consider the petition while the direct appeal was pending. A post-conviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with the direct appeal and a pending direct appeal would not divest the district court of jurisdiction to consider the collateral petition. NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing that the clerk of the district court

shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing that a post-conviction proceeding is separate from the direct appeal), *overruled on other grounds by Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988); *Groesbeck v. Warden*, 100 Nev. 259, 260, 679 P.2d 1268, 1268-69 (1984) (recognizing that a post-conviction habeas corpus petition is a petition seeking collateral review).<sup>1</sup> Further, the direct appeal had been resolved and the remittitur had issued, returning jurisdiction to the district court, when appellant filed her petition on August 20, 2013. *See Dennis v. State*, Docket No. 61800 (Order of Affirmance, April 9, 2013) (remittitur issued May 8, 2013). 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.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Cherry

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<sup>1</sup>We note that the district court could take the matter off calendar pending resolution of the direct appeal. This solution would preserve the timeliness of the petition.

cc: Hon. David A. Hardy, District Judge  
Antwanette Denise Dennis  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk