

IN THE SUPREME COURT OF THE STATE OF NEVADA

LERONE GIBSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64684

FILED

JAN 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant argues that the district court erred in dismissing his November 15, 2012, post-conviction petition for a writ of habeas corpus for lack of jurisdiction. In his petition, appellant challenged his judgment of conviction.¹ Appellant filed the petition while he was incarcerated. However, appellant expired his sentence and was released from custody during the litigation of the petition. After appellant's release, the district court concluded that expiration of appellant's sentence and discharge from

¹We note that the petition was not timely filed and was appellant's second petition. See NRS 34.726; NRS 34.810(1)(b). However, the district court concluded that appellant had good cause to excuse the procedural bars due to official interference. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also *Gonzales v. State*, 118 Nev. 590, 595, 53 P.3d 901, 904 (2002) (explaining that a petitioner may be able to demonstrate cause to excuse the procedural bars "based on official interference with the timely filing of a petition.").

custody deprived it of jurisdiction to consider appellant's petition due to application of NRS 34.360 and Nev. Const. art. 6, § 6(1). The district court also concluded that even if it were to consider appellant's petition, no further relief could be awarded given appellant's release from custody.

First, we conclude that the district court's reliance upon NRS 34.360 in this matter was misplaced. NRS 34.360 discusses the general provisions of a petition for a writ of habeas corpus, but not all of those provisions are applicable to post-conviction petitions for a writ of habeas corpus filed in compliance with NRS 34.720, *et. seq.* NRS 34.724(1) states that "a person convicted of a crime and under sentence of death or imprisonment . . . may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence." Appellant filed a post-conviction petition for a writ of habeas corpus, and thus, the post-conviction filing requirements from NRS 34.724(1) control. *See Cnty. of Clark v. Howard Hughes Co.*, 129 Nev. ___, ___, 305 P.3d 896, 897 (2013) (explaining that where a specific and general statute are contrary, the specific statute controls). Appellant was therefore merely required to file his petition while he was still serving his term of imprisonment. *See* NRS 34.724(1). As appellant filed the petition while he was still incarcerated, the district court should not have concluded that it lacked jurisdiction to consider the petition pursuant to NRS 34.360. Therefore, the district court erred in dismissing the petition.

Second, we conclude that the district court erred in finding that Nev. Const. art. 6 § 6(1) barred consideration of this matter. The Nevada Supreme Court has previously held that a district court lacked jurisdiction pursuant to Nev. Const. art. 6 § 6(1) to issue or grant a writ of habeas corpus if the post-conviction "petitioner filed the petition

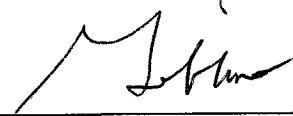
challenging the validity of a conviction *after* having completed the sentence for the challenged conviction.” *Jackson v. State*, 115 Nev. 21, 23 973 P.2d 241, 242 (1999) (emphasis added). Here, as stated previously, appellant filed his post-conviction petition while he was still incarcerated and in compliance with NRS 34.724(1). As appellant properly filed his post-conviction petition, the district court has the authority pursuant to NRS 34.770 to consider the merits of the petition and set an evidentiary hearing. Importantly, granting appellant’s writ pursuant to NRS 34.770 does not mean that appellant has been granted relief; it merely means that the district court has set an evidentiary hearing.² Therefore, the district court erred in dismissing the petition.


Third, we conclude that the district court erred when it found that it could not grant relief to petitioner because the relief sought, release from custody, had already occurred. A post-conviction petition for a writ of habeas corpus is the proper vehicle with which to seek “relief from a judgment of conviction or sentence.” NRS 34.720(1). A post-conviction petition may be used to allege that a conviction was obtained “in violation of the Constitution of the United States or the Constitution or the laws of this State.” NRS 34.724(1). In seeking relief from a judgment of conviction, a criminal defendant seeks more than just merely release from custody, as there are collateral consequences that accompany criminal convictions. *See Knight v. State*, 116 Nev. 140, 143-44, 993 P.2d 67, 70 (2000) (discussing the collateral consequences that criminal convictions

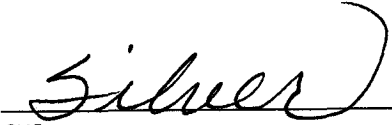
²We also note that because appellant is not in the physical custody of the Dept. of Corrections, he is responsible for his own attendance at any evidentiary hearing set by the district court in this matter.

carry and concluding that expiration of a sentence does not render a direct appeal challenging a judgment of conviction moot). As there are collateral consequences that accompany a criminal conviction, the district court may still grant appellant the relief sought, the vacation of a judgment of conviction, after he has been released from custody. Therefore, the district court erred by concluding that it could no longer award appellant the relief he sought. Accordingly, the district court should consider appellant's petition on the merits. We therefore

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk