

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD W. BRADBERRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64733

**FILED**

APR 10 2014

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

*ORDER OF REVERSAL AND REMAND*

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

On January 7, 2014, the district court judge denied the petition, concluding that she did not have jurisdiction to consider the habeas corpus petition while an appeal from an order denying a motion to modify sentence was pending in this court.

We conclude that the district court judge erred in concluding that she lacked jurisdiction to consider the petition while the appeal from the order denying the motion to modify sentence 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 appeal from the order denying a motion to modify sentence and the pending appeal did not divest the

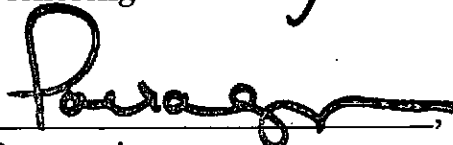
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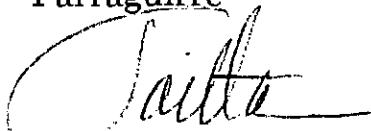
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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>2</sup> 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.  
Pickering

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

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

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<sup>2</sup>We note that while this appeal was pending, this court entered an order affirming the decision to deny the motion to modify sentence. See *Bradberry v. State*, Docket No. 63528 (Order of Affirmance, February 12, 2014). The remittitur issued on March 11, 2014.

cc: Hon. Carolyn Ellsworth, District Judge  
Ronald W. Bradberry  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk