

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65691

FILED

NOV 13 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 of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed a proper person petition on June 18, 2009, after the verdict but before sentencing and entry of the judgment of conviction. At appellant's request, the district court appointed counsel to represent appellant in the proceedings on his petition. Pursuant to a stipulation by the parties, the district court stayed the proceedings until the direct appeal was resolved. On September 18, 2012, counsel filed a notice of no supplement. On October 9, 2012, appellant filed a proper

¹This 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).

person supplemental petition. The district court subsequently allowed counsel to withdraw and appellant then filed seven more supplemental petitions. After appellant filed his last supplemental petition on December 5, 2013, the district court ordered the State to respond. The State filed a motion to dismiss the petition and supplements on the grounds that the petition was prematurely filed, the supplements were untimely filed and were fugitive pleadings, and appellant's claims were without merit or were procedurally barred. The district court granted the State's motion and dismissed appellant's petition.

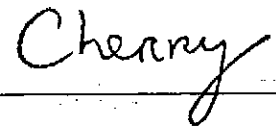
We conclude that the district court erred in dismissing appellant's petition. The district court did not address any of the claims raised in the June 18, 2009, petition. Rather, the district court appeared to find that the petition was prematurely filed and that the supplemental petition filed on October 9, 2012, was untimely because it was filed more than one year after the issuance of remittitur on direct appeal. Although the June 18, 2009, petition was filed before entry of the judgment of conviction on July 10, 2009, we conclude that this was not a proper basis for denying the petition almost five years later, especially when the district court proceeded with the petition following entry of the judgment by appointing counsel and characterizing the proceedings as "post-conviction." Therefore, we reverse with instructions for the district court to consider the June 18, 2009, petition. At that time, the district court

may also consider whether the supplemental petitions may be filed pursuant to NRS 34.750(5). 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.
Douglas

, J.
Cherry

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk