

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONNIE MONEY COLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67909

FILED

OCT 20 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. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Appellant Ronnie Money Coleman argues the district court erred in granting the State's motion to dismiss his petition. Coleman filed a timely post-conviction petition for a writ of habeas corpus on August 17, 2011, and a supplemental petition on May 13, 2013.¹ The State filed a motion to dismiss the petition, asserting the claims Coleman raised in his petition and supplement were either procedurally barred or lacked merit. Coleman did not oppose the motion to dismiss and the record before this court indicates Coleman's post-conviction counsel believed the petition and

¹We note initially Ms. Sally deSoto was appointed as post-conviction counsel and filed the supplemental petition. Ms. deSoto withdrew from representing Coleman and Ms. Mary Lou Wilson was later appointed as post-conviction counsel.

supplement were sufficient to oppose dismissal of the petition. The district court then dismissed Coleman's petition due to his failure to oppose the motion pursuant to DCR 13(3), which states "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and consent to granting the same." The district court did not consider Coleman's claims on their merits, whether any of those claims should be procedurally barred, or whether Coleman was entitled to an evidentiary hearing.


"[H]abeas corpus is a proceeding which should be characterized as neither civil nor criminal for all purposes. It is a special statutory remedy which is essentially unique." *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). Due to the unique nature of habeas corpus proceedings, the statutory provisions governing post-conviction petitions for a writ of habeas corpus in NRS chapter 34 control such proceedings. See NRS 34.720 (stating that NRS 34.720 to NRS 34.830 apply "only to petitions for writs of habeas corpus"); NRS 34.780(1) (stating that the Nevada Rules of Civil Procedure apply to proceedings for post-conviction petitions for a writ of habeas corpus to the extent they are not inconsistent with NRS Chapter 34); see also *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).

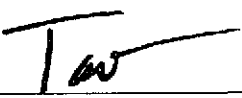
NRS chapter 34 does not provide for the disposition of a petition for the failure to oppose a motion. Rather, NRS 34.770 contemplates that the district court will review all of the documents filed in the post-conviction proceedings when making decisions concerning the

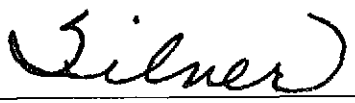
disposition of the petition. Further, “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and the district court should have considered whether any of Coleman’s claims were procedurally barred. Therefore, the district court erred by relying solely upon DCR 13(3) when dismissing Coleman’s petition and we reverse for consideration of the petition in accordance with NRS chapter 34.

However, we note the district court directed appointed post-conviction counsel, Ms. Mary Lou Wilson, to file an opposition to the State’s motion to dismiss or to otherwise adequately respond to the State’s assertions that the petition should be dismissed. Ms. Wilson did not comply with the district court’s direction. We further note Ms. Wilson had been Coleman’s appointed post-conviction counsel for more than one and one-half years without filing an opposition to the State’s motion to dismiss or a supplemental petition of her own. If the failure to properly oppose the State’s motion was due to some error or omission by Ms. Wilson, then the remedy should have been tailored to that error—including the possible removal of Ms. Wilson from the case and the appointment of new post-conviction counsel. As the district court has already determined the appointment of post-conviction counsel was warranted in this case, *see* NRS 34.750(1), upon remand the district court shall consider whether appointment of new post-conviction counsel or some other remedy is necessary in this matter. Accordingly we,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²In light of our order reversing and remanding this matter for further proceedings in the district court, we decline to consider Coleman's additional claims of error. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.