

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD D. HARDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68488

FILED

NOV 19 2015

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

This is an appeal from an order of the district court denying a motion to modify his sentence and a postconviction motion to withdraw his plea.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In his motion to withdraw filed on April 22, 2014, appellant Harold Harden claimed he asked counsel to withdraw his plea and claimed he was actually innocent. Harden's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of those claims, we

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

conclude the district court did not err in denying them. To the extent Harden listed his gang information, number of months employed, and arrests with no dispositions, he failed to argue or demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *Id.* Therefore, we conclude the district court did not err in denying Harden's motion.

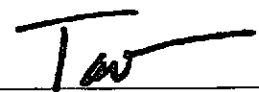
In his postconviction motion to withdraw his guilty plea, Harden claimed he received ineffective assistance of counsel. The Nevada Supreme Court has recently held that a postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing and that a postconviction motion to withdraw a guilty plea should be construed as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014). Here, Harden filed a postconviction motion to withdraw his guilty plea rather than a postconviction petition for a writ of habeas corpus. The State conceded that Harden should be given an opportunity to cure any defects in his filing. However, the district court did not give Harden this opportunity, and instead construed the motion as a postconviction petition for a writ of habeas corpus and denied his motion as untimely. As discussed in *Harris*, the district court should have permitted Harden a reasonable time period to cure any defects with respect to the procedural requirements of NRS chapter 34. *See id.*

We therefore reverse the decision of the district court and remand for the district court to construe the motion as a postconviction petition for a writ of habeas corpus and to provide Harden an opportunity

to cure any defects within a reasonable time period as set by the district court. 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. Kathleen E. Delaney, District Judge
Harold D. Harden
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.