

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH LARAY THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68416

FILED

MAR 17 2016

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

ORDER OF REVERSAL AND REMAND

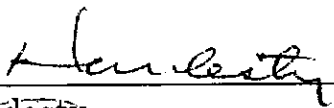
This is a pro se appeal from an order of the district court denying a postconviction motion to withdraw a guilty plea or correct an illegal sentence. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

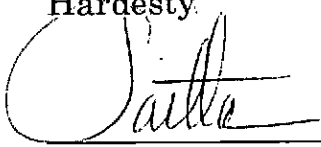
This court has held that postconviction motions to withdraw guilty pleas should be construed as postconviction petitions for a writ of habeas corpus. *See Harris v. State*, 130 Nev., Adv. Op. 47, 329 P.3d 619, 628 (2014). Pursuant to NRS 34.726, a postconviction petition for a writ of habeas corpus must be filed within one year of the issuance of the remittitur on direct appeal or the filing of the judgment of conviction unless the petitioner can demonstrate cause for the delay and undue prejudice. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”).

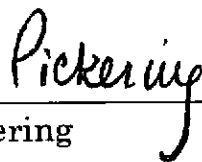
Here, the district court denied Thomas’ claims as barred by the law of the case doctrine. However, it did not refer to the fact that the motion was filed over five years after the judgment of conviction, *see* NRS 34.726(1), nor did its order contain specific findings of fact and conclusions

of law supporting its decision, *see* NRS 34.830(1). Thus, it is apparent from the record that the district court failed to construe Thomas' motion as a postconviction petition for a writ of habeas corpus as required by *Harris*. *See* 130 Nev., Adv. Op. 47, 329 P.3d at 628. Consequently, we 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 Thomas an opportunity to cure any defects with respect to the procedural requirements of NRS Chapter 34 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.


_____, J.
Hardesty


_____, J.
Saitta


_____, J.
Pickering

cc: Hon. Kathleen E. Delaney, District Judge
Kenneth Laray Thomas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk