

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTIN REED BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69882

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a postsentence motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Martin Brown filed his motion to withdraw his guilty plea on November 25, 2015. He claimed the district court should have given him an opportunity to withdraw his guilty plea before imposing the sentence because it was not inclined to follow the parties' sentencing recommendation. The district court denied Brown's motion after deciding it was not legally cognizable pursuant to *Harris v. State*, 130 Nev. ___, 329 P.3d 619 (2014). We conclude the district court erred in this regard.

In *Harris*, the Nevada Supreme Court held "a post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged." *Id.* at ___, 329 P.3d at 628. The court further stated,

In the case of future filings and for any currently pending post-sentence motion to withdraw a guilty plea, the district court *should* construe the motion to be a post-conviction petition for a writ of habeas corpus and require

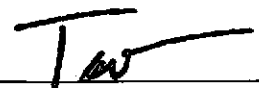
the defendant to cure any defects (filings not in compliance with the procedural requirements of NRS Chapter 34) within a reasonable time period selected by the district court.


Id. (emphasis added).

Because the district court failed to construe Brown's motion as a postconviction petition for a writ of habeas corpus and did not adequately address the merits of Brown's claim, the district court's order must be reversed and the matter remanded for proper consideration and resolution.¹ Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹To the extent the district court order indicates Brown failed to demonstrate a fair and just reason for granting his motion, it has not applied the correct standard for evaluating a postsentence request to withdraw a guilty plea. Instead, the district court must determine whether a manifest injustice warrants the withdrawal of the guilty plea. NRS 176.165; *Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

cc: Hon. William D. Kephart, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk