

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRAIG MICHAEL TITUS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70107

**FILED**

NOV 18 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Appellant Craig Michael Titus appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on August 27, 2014. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

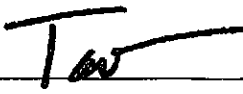
Titus claims the district court violated his due process right to notice and an opportunity to be heard by granting the State's motion to dismiss his habeas petition during the hearing conducted on January 28, 2016. He asserts the only issues set to be heard during this hearing were his motions for a continuance and the appointment of an investigator. And he argues he did not receive fair notice he needed to be prepared to argue other aspects of his postconviction litigation and his "fundamental right to be heard had 'little reality or worth,' because [he] was not informed that the court was also going to decide the State's motion to dismiss on January 28, 2016."


The record reveals postconviction counsel was appointed to review Titus' case file and determine whether anything could be done to overcome the procedural bars. During a November 3, 2015, status check, postconviction counsel requested a 90-day continuance to file a brief. The

district court granted the continuance and set a status check for February 2, 2016. However, prior to the status check and without notice, the district court granted the State's motion to dismiss Titus' petition. We conclude the district court erred by ruling on the State's motion to dismiss before Titus' continuance had expired. *See generally* NRS 34.750(4). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>1</sup>Titus also claims the district court abused its discretion by denying his motion for additional time in which to file an amended petition and/or opposition to the State's motion to dismiss the petition. We note the district court granted all five of Titus' previous requests for continuances, and we conclude it did not abuse its discretion by denying his sixth request for a continuance. *See Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007); *Mulder v. State*, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000); *Lord v. State*, 107 Nev. 28, 42, 806 P.2d 548, 557 (1991), *see also* EDCR 2.25(a).

cc: Hon. Susan Johnson, District Judge  
Law Office of Patricia M. Erickson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk