

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MYKEL TYREL BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72714

FILED

DEC 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *M. Mulca*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Mykel Tyrel Brown appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 19, 2016.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

The district court concluded it did not have jurisdiction to consider Brown's pro se motions to withdraw counsel and to appoint counsel and his pro se postconviction petition for a writ of habeas corpus while his direct appeal was pending. We disagree.

A postconviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and therefore it may be litigated contemporaneously with the direct appeal and the pending direct appeal does not divest the district court of jurisdiction to consider the collateral petition. See NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing the clerk of the district court

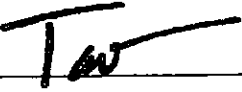
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing a postconviction proceeding is separate from the direct appeal), *overruled on other grounds by Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988); *Groesbeck v. Warden*, 100 Nev. 259, 260-61, 679 P.2d 1268, 1268-69 (1984) (recognizing a postconviction habeas corpus petition is a petition seeking collateral review).

Because the pendency of Brown's direct appeal did not deprive the district court of jurisdiction to consider Brown's postconviction habeas petition, we conclude the district court erred by denying the petition for lack of jurisdiction, and 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.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Mykel Tyrel Brown
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk