

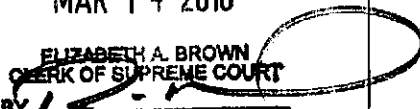
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL TODD O'NEAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73044

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Michael Todd O'Neal appeals from an order of the district court denying a motion to withdraw guilty plea without prejudice.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

O'Neal filed a motion to withdraw guilty plea on March 31, 2017, within one year of entry of the judgment of conviction. In his motion, O'Neal asserted he should be able to withdraw his guilty plea because his plea was conditioned upon a particular sentence, but the sentencing court instead imposed a lengthy sentence.

The district court noted the Nevada Supreme Court 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 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. 435, 448-49, 329 P.3d 619, 628 (2014). However, the district court did not construe O'Neal's motion as a postconviction petition for a writ of habeas corpus. Rather, the district court noted O'Neal should have a reasonable time to cure potential formatting defects, directed O'Neal to file a

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


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postconviction petition in compliance with NRS chapter 34, but then denied the motion without prejudice because it did not comply with the postconviction petition format identified by NRS 34.735.

The district court's decision to deny the motion without construing it as a postconviction petition for a writ of habeas corpus or permitting O'Neal the opportunity to cure the filing defects prior to the denial did not comply with the Nevada Supreme Court's *Harris* decision. *See* 130 Nev. at 448-49, 329 P.3d at 628; *see also Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (holding an inadequate verification of a petition for a writ of habeas corpus is an amendable rather than jurisdictional defect the district court should allow the petitioner to cure). In addition, NRS chapter 34 does not allow for a district court to dispose of a postconviction challenge to a judgment of conviction by denying it without prejudice. *See generally* NRS 34.830(2).

Therefore, we reverse the decision of the district court, and remand for the district court to construe O'Neal's motion as a postconviction petition for a writ of habeas corpus and to permit O'Neal a reasonable opportunity to cure the procedural defects. The district court should then consider O'Neal's underlying claim on the merits. 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.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Michael Todd O'Neal
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk