

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE JAMES THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72385

FILED

NOV 14 2017

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

*ORDER OF REVERSAL AND REMAND*

Eddie James Thomas appeals from an order of the district court dismissing his September 22, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time he has served.<sup>1</sup> Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

The district court dismissed Thomas' petition "pursuant to NRS 34.730(2) and (3)" and directed him to refile the petition as a new civil action with a blank case number. The district court erred in relying on this ground to deny relief. NRS 34.730 imposes no such duty on petitioners.

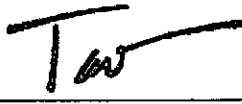
While NRS 34.730(3) provides the petition should be filed as a separate action, it is the responsibility of the clerk of the district court to file the petition as a separate action. NRS 34.730(3) ("[T]he clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had."). Any defects in the filing of the petition were curable defects and did not necessitate the dismissal of the petition. *See Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588,


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

590 (2004). Therefore, we reverse the order of the district court. We remand this matter for the district court clerk to refile the petition as a separate action. 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.  
Tao

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

SILVER, C.J., dissenting:

I dissent.

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

cc: Hon. Kerry Louise Earley, District Judge  
Eddie James Thomas  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk