

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS ANTHONY NAVARRETTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72926

FILED

MAY 15 2018

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

ORDER OF REVERSAL AND REMAND

This is a pro se appeal from a district court order denying appellant Nicholas Anthony Navarrette's postconviction motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.¹

The district court denied the motion on procedural grounds because it had been divested of jurisdiction by Navarrette's then-pending appeal of the district court's order denying an earlier postconviction habeas petition. *See Navarrette v. State*, Docket No. 70171 (Order of Affirmance, Ct: App. February 23, 2017). In this respect, the district court erred. As this court has explained, the postconviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of a guilty plea raised after sentencing where the defendant is in custody on the

¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(f)(3).

conviction being challenged. *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014). Navarrette's motion therefore should have been treated as a postconviction petition for a writ of habeas corpus.² Although the notice of appeal from the order resolving his earlier postconviction habeas petition divested the district court of jurisdiction to alter or reconsider that order, it did not divest the district court of jurisdiction to consider a new postconviction habeas petition. See NRS 34.810 (acknowledging that multiple petitions may be filed and providing circumstances in which a second or successive petition must be dismissed); cf. *Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 454-55 (2010) (holding that timely notice of appeal divests district court of jurisdiction except as to matters independent from the appealed order). We therefore reverse the district court's order and remand for the district court to treat the motion as a postconviction habeas petition and afford Navarrette the opportunity to bring his pleading into compliance with NRS 34.735.

It is so ORDERED.

Cherry, J.
Cherry

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Nicholas Anthony Navarrette
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We reject Navarrette's argument that his motion was "incident to the proceedings in the trial court" for purposes of NRS 34.724(2)(a).