

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MALCOLM GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73127

FILED

MAY 15 2018

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

ORDER OF REVERSAL AND REMAND

Malcolm Gray appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 2, 2017.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.


The district court denied Gray's petition "pursuant to NRS 34.738" and directed him to refile the petition as a new civil action. The district court erred in relying on this ground to deny relief. NRS 34.738 imposes no such duty on petitioners.

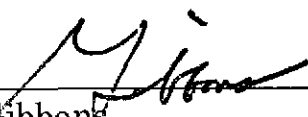
While NRS 34.730(3) provides the petition should be filed as a separate action, it is the responsibility of the clerk of the district court to file the petition as a separate action. NRS 34.730(3) ("[T]he clerk of the district court shall file a petition as a new action separate and distinct from any 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 denial of the petition. *See Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588,

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).

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

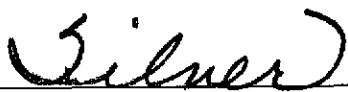
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Tao


_____, J.
Gibbons

SILVER, C.J., dissenting:

I dissent.


_____, C.J.
Silver

cc: Hon. Jennifer P. Togliatti, District Judge
Malcolm Gray
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk