

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 74598

FILED

SEP 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Brian Kerry O'Keefe appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on September 21, 2017.¹ Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

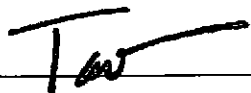
The district court granted the State's motion to dismiss O'Keefe's petition "without prejudice for [O'Keefe] to refile his petition in the appropriate department and under the appropriate case number." By doing so, the district court appears to have found that O'Keefe's petition challenged the validity of his judgment of conviction or sentence and therefore must be filed with the record of the original proceeding and assigned to the original department. See NRS 34.730(3).

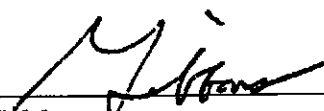
We note, the record on appeal reveals that O'Keefe's petition originally listed the case number as C250630 and the department number as XVII. These numbers subsequently were lined through and changed to case number A-17-761904-10 and department number XIII. Given this

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

circumstance, and the fact it is the responsibility of the clerk of the district court to properly file the petition, *see id.*, we conclude the district court erred by dismissing the petition. Therefore, we reverse the order of the district court and remand for the clerk of the district court to file the petition "in the appropriate department and under the appropriate case number." Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Tao


_____, J.
Gibbons

SILVER, C.J., dissenting:

I dissent.


_____, C.J.
Silver

²We have reviewed all documents O'Keefe has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent O'Keefe has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Mark R. Denton, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk