

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN NICHOLAS
MATAKIEWICZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72830

FILED

JUL 17 2018

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Jonathon Nicholas Matakiewicz appeals from an order of the district court denying a motion to modify or correct an illegal sentence and a motion to withdraw guilty plea filed on February 28, 2017.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Motion to modify or correct

In his motion, Matakiewicz claimed the charge he was convicted of and the sentence he received made no sense; the State and his counsel hid facts of the case that would show he was innocent; the State and his counsel took his money and his wife's life; and his time in prison has been difficult. Matakiewicz' claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. See

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

Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.

Motion to withdraw guilty plea

Matakiewicz claimed he should be allowed to withdraw his plea because he did not understand the plea, he has a hard time reading and writing, he was forced to take the plea by counsel, he is innocent, the State and counsel caused his wife to lose her life, the State is trying to take away his son, and everyone lied to him.

Matakiewicz filed his motion nearly three years after entry of the judgment of conviction on April 22, 2014. The district court correctly construed the motion to withdraw guilty plea 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). The district court then concluded Matakiewicz failed to demonstrate good cause and prejudice to overcome the procedural bars and denied the motion as procedurally barred.

We conclude the district court erred by denying Matakiewicz' motion to withdraw guilty plea without first allowing him to cure any defects in his pleadings. *See id.* The district court denied the motion to withdraw guilty plea only four days after the State filed its opposition to Matakiewicz' motion, and thus Matakiewicz was not given sufficient time to cure the defects in his motion. Therefore, we reverse the decision of the district court and remand the motion to withdraw guilty plea to the district court to permit Matakiewicz a reasonable opportunity to cure the defects in his motion. The district court should then consider whether Matakiewicz

demonstrated good cause and prejudice to overcome the procedural bars.
See NRS 34.726(1). Accordingly, we

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



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Kerry Louise Earley, District Judge
Jonathan Nicholas Matakiewicz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk