

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CLASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75629

FILED

MAR 14 2019

ELIZABETH A. ARONIN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER VACATING AND REMANDING FOR PETITION TO BE
TRANSFERRED TO CORRECT DISTRICT COURT CASE*

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant filed his petition on December 13, 2017, more than one year after his judgment of conviction was entered on November 21, 2016. Therefore, the district court denied the petition as untimely filed. See NRS 34.726(1). However, as the district court recognized when it denied the petition, appellant clearly intended to file the petition in District Court Case No. C317115.² In the petition, appellant stated that he was challenging his conviction for attempted robbery with the use of a deadly weapon (his conviction in Case No. C317115), and the performance of attorney Frank Kocka (his attorney in Case No. C317115). It appears from


¹This appeal has been submitted for decision on the record without briefing or oral argument. NRAP 34(f)(3), (g); *see also* NRAP 31(d)(1); *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

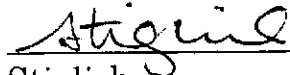
²Pursuant to the terms of a guilty plea agreement, appellant pleaded guilty in three different district court cases around the same time.



our review of the record that the petition would have been timely filed in Case No. C317115, as it was filed exactly one year after that judgment of conviction was entered on December 13, 2016. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter for the clerk of the district court to file the petition in the correct department.³


_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Douglas C. Crawford
Anthony Class
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Based on this decision, we deny appellant's motion to remand as moot. However, as the error in this case was clear, and the district court recognized the apparent error but did not seek clarification from the appellant, we reject the State's suggestion in the opposition to this motion that we lack authority to vacate the district court's decision.