

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70170

FILED

DEC 28 2016

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

ORDER OF REVERSAL AND REMAND

Appellant Miguel Angel Ramirez appeals from the denial of the petition for a writ of habeas corpus he filed on February 1, 2015.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The district court denied Ramirez' petition as procedurally barred because it was filed nearly 29 years after entry of his judgment of conviction and the court found he did not demonstrate good cause and prejudice to excuse the untimely filing. The district court also found laches applied and Ramirez failed to overcome the presumption of prejudice to the State. Ramirez argues the district court erred by denying his petition as procedurally barred. We agree.

In his petition, Ramirez challenged his parole revocation. In addition to alleging NRS 213.1243 was retroactively applied to him and challenging the conditions imposed, Ramirez also alleged that his due

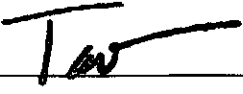
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

process rights were violated because no financial hardship hearing was conducted before his parole was revoked based on his failure to pay \$250. A challenge to the revocation of parole may be raised in a petition for a writ of habeas corpus under NRS 34.360. See NRS 34.500; *Hornback v. Warden*, 97 Nev. 98, 100, 625 P.2d 83, 84 (1981). Further, because such a petition does not challenge the judgment of conviction, it is not subject to the procedural bar identified in NRS 34.726 or laches under NRS 34.800. A parole revocation proceeding involves the loss of liberty and thus necessitates certain procedural due process protections for the parolee. *Hornback*, 97 Nev. at 100, 625 P.2d at 84; *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157-58 (1980). Due process for parole revocation hearings requires, at a minimum, "that finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior." *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972); see also *Anaya*, 96 Nev. at 122, 606 P.2d at 157-58 (citing *Morrissey* and setting out the minimum procedures necessary to revoke parole); NRS 213.1512; NRS 213.1517.

Because the district court improperly applied the procedural bars and dismissed Ramirez' petition without considering whether he was afforded the due process protections delineated in *Morrissey*, we reverse and remand for the district court to resolve the allegations set forth in Ramirez' habeas petition. 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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Miguel Angel Ramirez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²In light of this disposition, we decline to address Ramirez' remaining claims on appeal.