

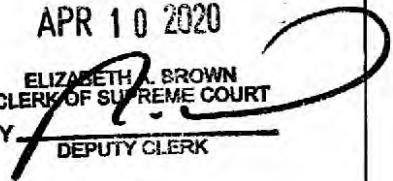
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GHOSTFACE GHOST CROWE, A/K/A
STEPHEN JOSHUA ZARATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78577-COA

FILED

APR 10 2020

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Ghostface Ghost Crowe appeals from an order of the district court denying a motion to withdraw a guilty plea and a motion for discovery. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Crowe filed a motion to withdraw his guilty plea on November 15, 2018, within one year of entry of the judgment of conviction. The district court found it lacked jurisdiction to consider Crowe's motion because he had filed a notice of appeal from entry of his judgment of conviction and the appeal had not yet been decided.

A postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after a defendant has begun serving his sentence and a postconviction motion to withdraw a guilty plea should be construed as a postconviction petition for a writ of habeas corpus. *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014). Moreover, a postconviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and

thus, it may be litigated contemporaneously with the direct appeal and a pending direct appeal would not divest the district court of jurisdiction to consider the collateral petition. See NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing that the clerk of the district court shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580-81, 688 P.2d 315, 316 (1984) (recognizing that a postconviction proceeding is separate from the direct appeal), *overruled on other grounds by Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988).

The district court should have construed Crowe's motion as a postconviction petition for a writ of habeas corpus and then permitted Crowe a reasonable time period to cure any defects with respect to the procedural requirements of NRS chapter 34. See *Harris*, 130 Nev. at 448-49, 329 P.3d at 628. We therefore reverse the decision of the district court, and remand for the district court to construe the motion as a postconviction petition for a writ of habeas corpus, and to provide appellant an opportunity to cure any defects within a reasonable time period as set by the district court. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Ghostface Ghost Crowe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The district court should reconsider Crowe's motion for discovery in light of our decision to reverse the district court's order denying Crowe's motion to withdraw his guilty plea. *See* NRS 34.780(2).

Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file a response, *see* NRAP 46A(c), the filing of a response would not aid this court's resolution of this case, and thus, has not been ordered. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.