

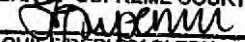
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK MCCAFFREY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80067-COA

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*


Patrick McCaffrey appeals from an order of the district court dismissing a petition to withdraw guilty plea filed on September 19, 2019. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

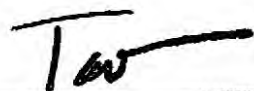
The district court dismissed McCaffrey's petition because the district court determined the petition was actually a postconviction petition for a writ of habeas corpus and McCaffrey's petition was not in the correct form as required by NRS 34.735.

We conclude the district court did not err by construing McCaffrey's petition to withdraw guilty plea as a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (a postconviction petition for a writ of habeas corpus is the exclusive remedy for challenging the validity of a conviction or sentence); *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014). However, we conclude the district court erred by dismissing the petition as not being in the correct form as required by NRS 34.735. Our review of the record reveals that McCaffrey's petition answered questions 1-8 and 19 as required by NRS 34.735. The remaining questions in the form largely did not apply to McCaffrey because he did not go to trial, he did not appeal from his judgment of conviction, and he has not filed other

challenges to his judgment of conviction. Therefore, we conclude McCaffrey's petition was in substantial compliance with the form as required by NRS 34.735 (stating that the petition "must be in substantially the following form").<sup>1</sup> Thus, we conclude the district court erred by summarily dismissing McCaffrey's petition on the basis that it was not in substantial compliance instead of addressing whether McCaffrey had demonstrated good cause to overcome the procedural time bar. Accordingly, we

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

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>Even assuming McCaffrey's petition was not in substantial compliance with NRS 34.735, the district court should have given McCaffrey an opportunity to cure the defects in his pleading before dismissing the petition. *See Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (recognizing that NRS Chapter 34 does not prohibit the amendment of a petition to cure pleading defects); *see also Harris*, 130 Nev. at 448-49, 329 P.3d at 628.

<sup>2</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Tierra Danielle Jones, District Judge  
Patrick McCaffrey  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk