

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVON SHONEER SURRELL, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79303-COA

FILED

SEP 04 2020

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

ORDER OF REVERSAL AND REMAND

Alvon Shoneer Surrell, Sr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 31, 2018. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Surrell contends the district court erred by denying his petition on the grounds that it does not conform to NRS 34.730 and NRS 34.735. The district court acknowledged Surrell's defects could be cured by amendment but denied the petition without prejudice. NRS chapter 34 does not allow for a district court to dispose of a petition by denying it without prejudice. *See generally* NRS 34.830. And the district court's dismissal of the petition without prejudice may implicate jurisdictional and procedural default concerns. *See* NRS 34.724(1) (requiring petitioner to be "under sentence of death or imprisonment"); NRS 34.726(1) (requiring petitions be timely filed); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999).

Surrell must be afforded a reasonable opportunity to cure the defects before the district court denies the petition. *See Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004); *cf. Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014) (holding district court should allow a

defendant time to cure any defects "within a reasonable time period selected by the district court" when construing a postsentence motion to withdraw a guilty plea as a postconviction habeas petition). We therefore reverse the district court's order denying Surrell's petition and remand this matter for the district court to provide Surrell with an opportunity to cure the defects. Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Alvon Shoneer Surrell, Sr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk