

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEY MAYEN BURTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82141-COA

FILED

JUL 14 2021

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

ORDER OF REVERSAL AND REMAND

Key Mayen Burton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 17, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

In his petition, Burton claimed the State withheld exculpatory, material evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and asserted that his trial-level counsel was ineffective. The district court did not review the merits of Burton's claims, but rather denied Burton's petition on the grounds that it did not comply with the format outlined in NRS 34.735. The district court denied the petition without prejudice and directed Burton to file another petition utilizing the proper format.

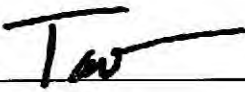
NRS chapter 34 does not provide for the disposition of a petition by denying it without prejudice. *See generally* NRS 34.830. And the district court's denial of the petition without prejudice and its requirement that Burton file a new petition may implicate procedural default concerns. *See* NRS 34.726(1) (requiring petitions be timely filed).

The district court should have afforded Burton a reasonable opportunity to cure the defects before it denied his 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 Burton’s petition and remand this matter for the district court to provide Burton 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. Michael Villani, District Judge
Key Mayen Burton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk