

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELMER VALENTIN SANCHEZ-  
RODRIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82185-COA

FILED

SEP 13 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Edrees*  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Elmer Valentin Sanchez-Rodriguez appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on September 19, 2019. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Sanchez-Rodriguez argues the district court erred in granting the State's motion to dismiss his petition. Sanchez-Rodriguez filed a timely postconviction petition for a writ of habeas corpus. Counsel was appointed and filed a notice of no supplement. The State filed a motion to dismiss the petition, asserting the claims Sanchez-Rodriguez raised in his petition were outside the scope of a postconviction petition or lacked merit. Sanchez-Rodriguez did not oppose the motion to dismiss.

The district court dismissed Sanchez-Rodriguez's petition due to his failure to oppose the motion pursuant to DCR 13(3), which states,

21-26353

“Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and consent to granting the same.” The district court did not consider Sanchez-Rodriguez’s claims on their merits, whether the claims were within the scope of a postconviction petition, or whether Sanchez-Rodriguez was entitled to an evidentiary hearing.

“[H]abeas corpus is a proceeding which should be characterized as neither civil nor criminal for all purposes. It is a special statutory remedy which is essentially unique.” *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). Due to the unique nature of habeas corpus proceedings, the statutory provisions governing postconviction petitions for a writ of habeas corpus in NRS chapter 34 control such proceedings. *See* NRS 34.720 (stating that NRS 34.720 to NRS 34.830 apply “only to petitions for writs of habeas corpus”); NRS 34.780(1) (stating that the Nevada Rules of Civil Procedure apply to proceedings for postconviction petitions for writs of habeas corpus to the extent they are not inconsistent with NRS chapter 34); *see also* *Cty. of Clark v. Howard Hughes Co.*, 129 Nev. 410, 412, 305 P.3d 896, 897 (2013) (explaining that, where a specific and general statute are contrary, the specific statute controls).

NRS chapter 34 does not provide for the disposition of a petition for the failure to oppose a motion. Rather, NRS 34.770 contemplates that the district court will review all of the documents filed in the postconviction

proceedings when making decisions concerning the disposition of the petition. Therefore, we conclude the district court erred by relying upon DCR 13(3) to dismiss Sanchez-Rodriguez's petition and reverse for consideration of the petition in accordance with NRS chapter 34. 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  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk