

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRESTON WAYNE HELLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81410

**FILED**

DEC 17 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
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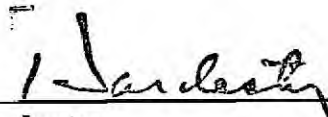
**ORDER VACATING JUDGMENT AND REMANDING**


This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge. Appellant Preston Wayne Heller argues that the district court erred in denying the petition as procedurally barred. We vacate and remand.

Heller was convicted pursuant to a guilty plea. In his petition for postconviction habeas relief, Heller alleged that counsel provided ineffective assistance during the sentencing hearing on the basis of several omissions. The district court concluded that the petition was barred under NRS 34.810(1)(a) because Heller pleaded guilty and the petition was “not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.” In rejecting Heller’s petition, the district court did not have the benefit of our recent decision in *Gonzales v. State*, 137 Nev., Adv. Op. 40, 492 P.3d 556 (2021). There, we clarified that a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing because that claim could not have been raised before entering the plea and barring such a claim would “violate the spirit of our habeas statute and the public policy of this state.” *Id.* at 562. Consistent with *Gonzales*, the district

court should reach the merits of Heller's claims that counsel provided ineffective assistance at sentencing.<sup>1</sup> Accordingly, we

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

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Herndon

  
\_\_\_\_\_, Sr.J.  
Gibbons

cc: Hon. Kathleen M. Drakulich, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>1</sup>In light of our disposition, we need not reach Heller's other contentions.

<sup>2</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.