

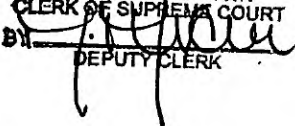
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN A. LANDAVERDE A/K/A
BRYAN A. LANDAVERDE TEJADA,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87436-COA

FILED

JUL 03 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Bryan A. Landaverde appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 13, 2023. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In his petition, Landaverde raised claims alleging prosecutorial misconduct, judicial error, ineffective assistance of trial counsel, and that his guilty plea was invalid. The district court did not review the merits of Landaverde's claims, but rather denied Landaverde's petition on the grounds that it did not comply with the provision that he serve the district attorney's office and the attorney general's office pursuant to NRS 34.730 and NRS 34.735. The district court denied the petition without prejudice and directed Landaverde to file another petition properly serving the parties.

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 Landaverde 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 Landaverde 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 Landaverde’s petition and remand this matter for the district court to provide Landaverde 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.
Bulla


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Bryan A. Landaverde
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk