



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN TYRON JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91590-COA

ORDER OF REVERSAL AND REMAND

Justin Tyron Jackson appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on January 22, 2024. Second Judicial District Court, Washoe County; Kathleen Drakulich, Judge.

Jackson's petition was filed by the Second Judicial District Court clerk on January 22, 2024. The remittitur on Jackson's direct appeal was issued on January 17, 2023. Because Jackson's petition was filed outside the one-year deadline for postconviction habeas petitions, *see* NRS 34.726(1), the State argued the postconviction habeas petition was procedurally barred. In response to the State's argument, Jackson contended his postconviction habeas petition should be considered timely filed because it was received by the district court clerk on January 2, 2024—before the expiration of the one-year deadline—but was returned to Jackson unfiled because it lacked an affirmation that the petition did not contain personal information. The district court granted the State's motion to dismiss because Jackson's petition was filed five days late without considering Jackson's claim that his petition should be considered timely filed based on when it was received by the district court clerk.

On appeal, Jackson argues, in part, that the district court erred by dismissing his postconviction habeas petition because the district court failed to consider his claim that the petition should be considered timely filed. We agree. Jackson alleged specific facts regarding his timeliness argument that were not belied by the record and, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Here, Jackson claimed he submitted his petition for filing on January 2, 2024, but it was returned unfiled by the district court clerk because it failed to contain an affirmation that the document did not include personal information.

Washoe District Court Rule (WDCR) 10(7) requires an affirmation stating the document presented for filing does not contain personal information. However, WDCR 10(10)(a) states that “[a]fter a document is submitted, *filed*, and served, the clerk may review the document to determine whether it is a nonconforming document.” (Emphasis added.) Thus, the district court clerk was required to file the document before determining whether the document was nonconforming. “This court has several times confirmed the absolute obligation of the district courts to file documents submitted to them and to preserve the right of citizens to access to the courts, whether indigent or not.” *Sullivan v. Eighth Jud. Dist. Ct.*, 111 Nev. 1367, 1371, 904 P.2d 1039, 1041 (1995).

While the district court clerk is given the authority to strike documents that do not contain the required affirmation, *see* WDCR 10(10)(c), striking a document necessarily means the document was first filed, *see Strike, Black’s Law Dictionary* (12th ed. 2024) (defining “strike” in this context as “[t]o expunge, as from a record”). Moreover, the lack of an affirmation that the petition did not contain personal information was a curable defect, *see Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) (holding that, where a defect

is not jurisdictional and is amendable, the district court should allow the petitioner to amend the petition to cure the defect), and the date the petition was first received by the district court clerk should be considered the filed date for procedural bar purposes, *cf. Sullivan*, 111 Nev. at 1371, 904 P.2d at 1042 (“[F]or statute of limitations purposes, the complaint would have to be considered filed on the date of actual receipt by the clerk of the district court.”). Thus, we reverse this matter for the district court to conduct an evidentiary hearing to determine whether Jackson’s petition should be considered timely filed.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


Bulla, C.J.


Gibbons, J.


Westbrook, J.

¹If, on remand, there is ambiguity about the date on which the district court clerk first received the petition, “it would be fair to resolve the ambiguity in the record in appellant’s favor.” *Huebner v. State*, 107 Nev. 328, 332, 810 P.2d 1209, 1212 (1991).

²Given our disposition in this case, we need not address Jackson’s remaining arguments on appeal.

cc: Hon. Kathleen M. Drakulich, District Judge
Attorney General/Carson City
Washoe County District Attorney
Michael Lasher, LLC
Second District Court Clerk