

IN THE SUPREME COURT OF THE STATE OF NEVADA

KURT W. JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38856

**FILED**

**DEC 02 2003**

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court order denying appellant Kurt W. Johnson's post-conviction petition for a writ of habeas corpus.

On November 15, 2000, Johnson was convicted, pursuant to a guilty plea, of one count of accessory to murder. The district court sentenced Johnson to serve a prison term of 24 to 60 months. Johnson appealed, and this court affirmed his conviction.<sup>1</sup>

On December 1, 2000, Johnson filed the following proper person motions in the district court: (1) motion to dismiss counsel, (2) motion for discovery, (3) motion to dismiss, (4) motion for modification of sentence, and (5) motion alleging ineffective assistance of counsel. The district court denied those motions on December 15, 2000.

On August 17, 2001, Johnson filed a "supplemented" post-conviction petition for a writ of habeas corpus. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Johnson or to conduct an

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<sup>1</sup>Johnson v. State, Docket No. 37164 (Order of Affirmance, June 27, 2001).

evidentiary hearing. On November 6, 2001, the district court entered an order denying the petition. This timely appeal followed.

This court's review of the record on appeal revealed that the record before this court was incomplete. In particular, this court noted that there were claims of ineffective assistance of trial counsel addressed in both the State's opposition and the district court's order denying the petition that were not set forth in Johnson's "supplemented petition" or in any other document included in the record on appeal. Therefore, on March 17, 2003, this court ordered the clerk of the district court to transmit the "underlying post-conviction petition for a writ of habeas corpus, or to advise this court if no such document was ever filed and made a part of the record below."<sup>2</sup>

On March 24, 2003, the clerk of the district court responded to the order, informing this court that the underlying habeas petition was not part of the record made in the district court. Accordingly, on June 30, 2003, this court temporarily remanded this case to the district court for a determination of whether the record on appeal accurately reflected all of the claims presented, considered, and resolved below. This court's order specifically directed the district court to either supplement the record below with appellant's underlying habeas petition, or alternatively, to advise this court that the record cannot be supplemented or reconstructed.<sup>3</sup>

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<sup>2</sup>Johnson v. State, Docket No. 38856 (Order Directing Transmission of Supplemental Record on Appeal, March 17, 2003).

<sup>3</sup>Johnson v. State, Docket No. 38856 (Order of Temporary Remand, June 30, 2003).

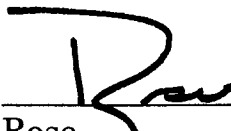
In response to the temporary order of remand, the district court has now transmitted to this court: (1) a certified copy of Johnson's supplemental post-conviction petition for a writ of habeas corpus filed on August 17, 2001; (2) a certified copy of an amended district court order denying appellant's petition; and (3) a copy of the district court minutes of a proceeding conducted by the district court on October 8, 2003, addressing this court's temporary order of remand. According to the district court minutes, after discussing the issue with counsel for the State, the district court concluded that the supplemental petition filed on August 17, 2001, was the missing document needed by this court to effectively review this appeal.


The supplemental petition, however, is not the document that is missing from the record on appeal. The supplemental petition filed below on August 17, 2001, is included in the record on appeal. Neither the supplemental petition, nor any other post-conviction document included in the record on appeal raises the claims discussed and rejected in the district court's amended order. Thus, it appears that the district court is unable to provide this court with a copy of the underlying habeas petition in which Johnson actually raised the claims resolved in the district court's written order.

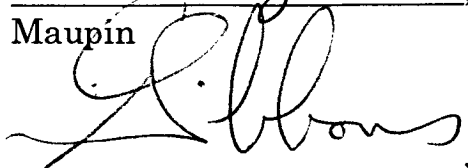
As noted, this court cannot effectively review the district court's decision on those claims without the habeas petition or other post-conviction document in which Johnson originally presented those claims below. Under the circumstances, we reverse and remand this matter with instructions to the district court to permit Johnson to file another post-conviction petition for a writ of habeas corpus restating all of the claims he

apparently previously raised below in an underlying petition that was inexplicably not formally made part of the record. Accordingly, we

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

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

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

cc: Hon. Sally L. Loehrer, District Judge  
Kurt W. Johnson  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk