

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRIS D. PILAFAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39533

FILED

NOV 21 2003

ORDER OF REVERSAL AND REMAND BY *J. Richards*
JANETTE M. BLOOM
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant Harris D. Pilafas's post-conviction petition for a writ of habeas corpus.

On January 21, 2000, Pilafas was convicted, pursuant to an Alford¹ plea, of one count of attempted sexual assault. The district court sentenced Pilafas to serve a prison term of 15 years and gave him 340 days credit for time served. Pilafas filed a timely direct appeal from the original judgment of conviction. On November 15, 2000, this court granted Pilafas's motion to voluntarily dismiss the appeal.²

On February 7, 2001, Pilafas filed a proper person motion seeking additional credit for time served. The district court granted Pilafas's motion, and on February 13, 2001, entered an amended judgment of conviction crediting Pilafas with an additional 80 days credit for time served. The amended judgment of conviction, however, contained several clerical errors; in particular, it stated that Pilafas had pleaded guilty, when in fact, he had entered an Alford plea and stated that the district

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Pilafas v. State, Docket No. 35528 (Order Dismissing Appeal, November 15, 2000).

court had granted Pilafas probation, when in fact, it had sentenced him to serve a 15-year prison term. Accordingly, on March 6, 2001, the district court entered a second amended judgment correcting those errors.

On November 15, 2001, the district court received Pilafas's proper person post-conviction petition for a writ of habeas corpus, contending that his guilty plea was coerced and his trial counsel was ineffective at sentencing. The habeas petition was filed the next day on November 16, 2001. The State opposed the petition. The district court declined to appoint counsel to represent Pilafas or to conduct an evidentiary hearing. On March 21, 2002, the district court denied the petition, ruling that it was untimely because it was filed twenty-two months after the entry of the original judgment of conviction. Pilafas, with the assistance of counsel, filed the instant appeal.

Our review of the record on appeal indicates that the district court erred in ruling that Pilafas's habeas petition was untimely.³ NRS 34.726(1) provides that a post-conviction habeas petition "must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the supreme court

³Pilafas contends that the district court erred in ruling that his petition was procedurally barred because it was filed within one year of the amended judgment of conviction. In the alternative, Pilafas argues that the district court erred in dismissing his petition because he demonstrated good cause for his procedural default. Because we conclude that the district court erred in dismissing the petition as untimely since it was filed within one year of the order granting the motion for voluntary dismissal of the appeal, we need not consider Pilafas's remaining contentions.

issues its remittitur."⁴ However, when a timely appeal is voluntarily dismissed by the parties, no remittitur is issued; therefore, the one-year period for filing a post-conviction habeas corpus petition under NRS 34.726(1) commences from the date of this court's order dismissing the appeal.⁵

In this case, this court granted Pilafas's motion to voluntarily dismiss the appeal, and filed an order dismissing the appeal on November 15, 2000. Pilafas's proper person habeas petition was received by the district court exactly 365 days later on November 15, 2001.⁶ Because Pilafas's petition was received by the district court clerk within the one-year period set forth in NRS 34.726(1), the petition was timely filed. Therefore, we conclude the district court erred in dismissing the petition

⁴See also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding that "the one-year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal to this court").


⁵See NRAP 42(b); Gonzales v. State, 118 Nev. ___, ___ n.18, 53 P.3d 901, 904 n.18 (2002).


⁶Although Pilafas's habeas petition was not filed by the district court until the next day, on November 16, 2001, we use the date the petition was received. "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. District Court, 111 Nev. 1367, 1371, 904 P.2d 1039, 1041 (1995); see also Huebner v. State, 107 Nev. 328, 810 P.2d 1209 (1991). For purposes of determining the jurisdiction of the court, the document is effective on the date it is received by the district court clerk. Huebner, 107 Nev. at 331-32, 810 P.2d at 1212; see also Sullivan, 111 Nev. at 1371-72, 904 P.2d at 1041 (holding that a complaint will also be deemed filed on the date on which it is received).

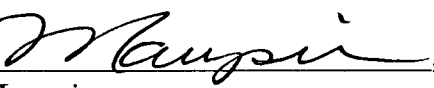
as untimely. The district court should have considered the merits of Pilafas's claims.

Having considered Pilafas's contentions and concluded that the district court erred in ruling the petition was untimely, 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.
Leavitt


_____, J.
Maupin

cc: Hon. John S. McGroarty, District Judge
William J. Taylor
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk