

IN THE SUPREME COURT OF THE STATE OF NEVADA

GALEN L. CLAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41300

FILED

FEB 18 2004

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Rube*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Galen Clay's post-conviction petition for a writ of habeas corpus.

On December 30, 2002, the district court convicted Clay, pursuant to a guilty plea, of battery with intent to commit a crime. The district court sentenced Clay to serve a term of 48 to 144 months in the Nevada State Prison. This court affirmed Clay's judgment of conviction and sentence.¹


On January 7, 2003, Clay filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 16, 2003, Clay's appellate counsel appeared in the district court and informed the court that a direct appeal would soon be filed. On February 8, 2003, the district court entered an order striking Clay's petition, concluding that it lacked jurisdiction to consider Clay's habeas corpus petition while a direct appeal was pending in this court. This appeal followed.


¹Clay v. State, Docket No. 40698 (Order of Affirmance, August 15, 2003).

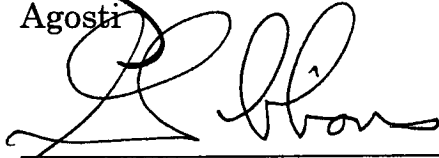
We conclude that the district court did not lack jurisdiction to consider Clay's petition for a writ of habeas corpus. No rule of law prevents the district court from exercising jurisdiction over a habeas corpus petition while a direct appeal from the judgment of conviction is pending in this court.² We reverse the order of the district court striking Clay's habeas corpus petition, and we remand this matter to the district court to consider the merits of his petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral arguments are unwarranted in this matter.³ 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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

²See Sheriff v. Gleave, 104 Nev. 496, 498, 761 P.2d 416, 418 (1988) (holding that "[h]abeas corpus in an independent proceeding"); Varwig v. State, 104 Nev. 40, 752 P.2d 760 (1988).

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Galen L. Clay
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk