

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARON KEITH HOLMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41974

FILED

MAY 20 2004

ORDER OF REVERSAL AND REMAND

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

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

On April 3, 2002, the district court convicted appellant, pursuant to an Alford plea,¹ of two counts of sexual assault on a minor under the age of fourteen years. The district court sentenced appellant to serve concurrent terms of sixty to two hundred and forty months in the Nevada State Prison.

On April 14, 2003, appellant filed a motion for an extension of time to file a habeas corpus petition. The State opposed the petition. On May 8, 2003, the district court denied appellant's motion.²

On June 18, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Pursuant to NRS 34.750 and

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

²On May 5, 2003, after the district court orally denied the motion for an extension, appellant filed a motion to withdraw his motion for an extension of time.

34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 25, 2003, the district court dismissed appellant's petition. This appeal followed.

The district court determined that appellant's petition was procedurally barred because it was untimely filed. However, this court's review of the record on appeal reveals that appellant's petition was not procedurally time barred. Specifically, appellant filed two notices of appeal from the judgment of conviction on April 11, 2002. The April 11, 2002 notices of appeal were transmitted to this court and docketed in an already pending matter—Docket No. 39386.³ The April 11, 2002 notices of appeal were not considered by this court prior to its order dismissing appeal in Docket No. 39386.⁴ Jurisdiction, however, was properly vested in this court in Docket No. 39386 with the filing of the April 11, 2002 notices of appeal. Contemporaneously with this order, this court has entered an order in Docket No. 39386 recalling the remittitur, vacating the order dismissing appeal and reinstating the appeal from the judgment of conviction.

In light of this court's order in Docket No. 39386, we conclude that appellant's habeas corpus petition is not procedurally barred.⁵ Accordingly, we reverse the order of the district court and remand this

³Docket No. 39306 involved an appeal from an order of the district court denying a motion to dismiss counsel.

⁴See Holmes v. State, Docket No. 39386 (Order Dismissing Appeal, May 9, 2002).


⁵See NRS 34.726(1) (providing that a habeas corpus petition must be filed within one year from the issuance of the remittitur from a timely direct appeal).

matter to the district court to consider the merits of the petition.⁶ Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁷ 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

cc: Hon. Valorie Vega, District Judge
Baron Keith Holmes
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶The district court may in its discretion stay consideration of the habeas corpus petition until after resolution of the direct appeal. The district court may permit appellant to supplement the petition within a reasonable period of time after resolution of the direct appeal.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).