

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES VINCENT MERCANTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75020

FILED

SEP 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

James Vincent Mercanto appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 5, 2018.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Mercanto claimed the Nevada Department of Corrections (NDOC) was not applying his statutory credits to his minimum sentence as required by NRS 209.4465(7)(b) and its application of the NRS 209.4465(8) exclusions violated his right to equal protection of the law. The State moved to transfer the petition to the Eighth Judicial District Court because Mercanto was incarcerated in Clark County, his petition challenged the computation of time served, and such petitions are supposed to be filed in the district court for the county where the petitioner is incarcerated.

The district court did not rule on the State's motion. Instead, it found that Mercanto's petition sought "additional presentence credit [for] time served because of statutory credit earned under NRS 209.4465 while


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

in jail," it determined that NRS 209.4465 did not apply to presentence confinement, and it denied the petition. The record on appeal does not support the district court's construction of Mercanto's postconviction claims and we conclude it erred by ruling on his petition.

Petitions that do not challenge the validity of a conviction or sentence must be filed in the district court for the county where the petitioner is incarcerated. NRS 34.738(1). "A petition that is not filed in the district court for the appropriate county . . . [m]ust be transferred by the clerk of that court to the clerk of the district court for the appropriate county." NRS 34.738(2)(a).

The record demonstrates that Mercanto's petition challenged the computation of time served, he filed his petition in the district court for Washoe County, and he is incarcerated in Clark County. We conclude from this record that the district court erred by failing to transfer Mercanto's petition to the Eighth Judicial District Court as was required by NRS 34.738(2)(b). 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.
Tao


_____, J.
Gibbons

SILVER, C.J., dissenting:

I dissent.


_____, C.J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
James Vincent Mercanto
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk