

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK J. BENSON, A/K/A
FREDDIE BENSON, JR., A/K/A
FREDRICK J. BENSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76759-COA

FILED

MAY 15 2019

ELIZABETH A. BROWN
CLERK OF THE COURT
BY: *[Signature]*
CHIEF CLERK

ORDER OF REVERSAL AND REMAND

Frederick J. Benson appeals from an order of the district court denying a motion to withdraw his guilty plea filed on July 18, 2018.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.


The district court construed Benson's motion as a postconviction habeas petition per *Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014), found the petition was procedurally barred, and concluded Benson failed to overcome any procedural bars. The district court failed to give Benson the opportunity to cure any defects. *See id.* at 448-49, 329 P.3d at 628; *see also* NRS 34.750(5) (giving a petitioner 15 days to respond whenever the State seeks to dismiss a petition). Because the district court did not follow the requirements of *Harris*, we reverse.


On remand, the district court shall provide Benson with an opportunity to cure any defects with respect to the procedural requirements


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

of NRS Chapter 34 within a reasonable time period as set by the district court. *See id.* For the foregoing reasons, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Frederick J. Benson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk