

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARY KEITH NEAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76494-COA

FILED

MAY 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Cary Keith Neal appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed April 4, 2018.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

We previously ordered the State to show cause why the district court's order denying Neal's petition as untimely should not be reversed. *See Neal v. State*, Docket No. 76494-COA (Order to Show Cause, May 8, 2019). Although Neal's petition was filed outside the one-year time limit, *see* NRS 34.726(1), it was received by the clerk of the district court within the one-year time limit. And it is the clerk's duty, not the parties', to *file* submitted documents. *See Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995).


In its response, the State does not dispute that the clerk received the petition within the one-year time limit and indicates it does not oppose a remand to consider Neal's petition on the merits. Because the record demonstrates the district court clerk received the petition within the


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

one-year time limit for filing the petition, we conclude the district court erred by denying the petition as untimely. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to consider Neal's petition on the merits.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Valerie Adair, District Judge
Cary Keith Neal
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk