

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD LEE MILBOURN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72217

**FILED**

OCT 12 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY: S. Young  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Richard Lee Milbourn appeals from a district court order denying his petition for a writ of habeas corpus filed on May 6, 2016, and supplemental pleadings filed on May 16, 2016; September 26, 2016; October 27, 2016; October 31, 2016; November 10, 2016; November 17, 2016; November 22, 2016; and November 23, 2016.<sup>1</sup> Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The district court clerk construed Milbourn's petition as a request for postconviction relief and filed it in district court case number C85-478. The district court ordered the Washoe County District Attorney's Office to respond and ultimately denied the petition, stating Milbourn should file his petition in the Eighth Judicial District Court. We conclude these actions were in error.

Milbourn's initial pleading indicated he was filing a petition for writ of habeas corpus questioning under what authority of law he was being held, *see* NRS 34.360 ("Every person unlawfully committed, detained,

---

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

confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.”), and not seeking postconviction relief. As such, there can be no justification for filing Milbourn’s petition in his 1985 criminal case. Accordingly, we direct the district court clerk to file Milbourn’s petition and related documents as its own case.

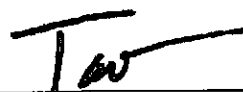
The district court’s conclusion that it could not grant relief was incorrect as a matter of law as the Second Judicial District Court had jurisdiction to decide the petition. *See* NRS 34.390(1). Further, because Milbourn challenged the authority by which the State detains him, the Office of the Attorney General, not the Washoe County District Attorney’s Office, was the proper respondent. *Compare* NRS 228.170(1), *with* NRS 252.110. Accordingly, we direct the district court to order the response from the Office of the Attorney General as to the authority by which Milbourn is being held. We note the Office of the Attorney General may need to be served with Milbourn’s filings when ordering the response. Accordingly, we

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



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Connie J. Steinheimer, District Judge  
Richard Lee Milbourn  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk