

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

J.W. BECK, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70099

FILED

DEC 28 2016

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

ORDER OF REVERSAL AND REMAND

Appellant J.W. Beck, III, appeals an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 2, 2016.¹ Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Beck filed a petition challenging his judgment of conviction and sentence. He also filed a motion to withdraw counsel and a motion to proceed in forma pauperis.² The district court denied the petition and the motion to proceed in forma pauperis because they were filed in the original case relating to the underlying criminal case and not filed as a separate case.


We conclude the district court erred by relying on this ground to deny relief. Although NRS 34.730(3) provides that a petition

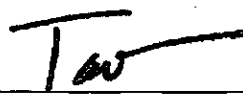
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²We conclude the district court properly denied the motion to withdraw counsel as moot because counsel of record moved to withdraw after Beck filed his motion.

challenging the judgment of conviction and sentence should be filed as a separate action, it is the responsibility of the clerk of the district court to file the petition as a separate action. NRS 34.730(3) (providing in pertinent part "the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had"). Any defects in the filing of the petition were curable defects and did not necessitate the denial of the petition. See *Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004). Therefore, we reverse the order of the district court and remand this matter to allow for correction of the defect in the filing and consideration of the postconviction petition for a writ of habeas corpus and the motion to proceed in forma pauperis on the merits. Accordingly, 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.
Silver

cc: Hon. Alvin R. Kacin, District Judge
J.W. Beck, III
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk