

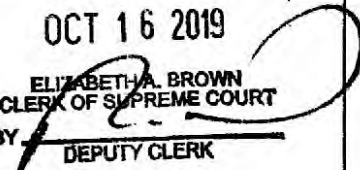
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND G. PADILLA,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 77896-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Raymond G. Padilla appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

The district court concluded it did not have jurisdiction to consider Padilla's September 27, 2018, postconviction petition for a writ of habeas corpus while his direct appeal concerning his conviction in district court case number C-16-318576-1 was pending. We disagree.


A postconviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with the direct appeal and a pending direct appeal would not divest the district court of jurisdiction to consider the collateral petition. See NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing that the clerk of the district court shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing that a postconviction proceeding is separate from the direct appeal),

overruled on other grounds by Varwig v. State, 104 Nev. 40, 752 P.2d 760 (1988); *Groesbeck v. Warden*, 100 Nev. 259, 260, 679 P.2d 1268, 1268-69 (1984) (recognizing that a postconviction habeas corpus petition is a petition seeking collateral review).

Because the pendency of Padilla's direct appeal did not deprive the district court of jurisdiction to consider his postconviction petition for a writ of habeas corpus in district court case number C-16-318576-1, we conclude the district court erred by dismissing the petition for lack of jurisdiction, and 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
Raymond G. Padilla
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk