

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS JEROME BLACKWELL,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 77723-COA

FILED

OCT 22 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Marcus Jerome Blackwell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus that was transferred to the Eleventh Judicial District Court on September 27, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Blackwell's conviction was obtained in the Eighth Judicial District Court. His petition challenged the validity of his sentence and was properly filed in the Eighth Judicial District Court. *See* NRS 34.738(1). However, the Eighth Judicial District Court incorrectly determined Blackwell was challenging the computation of time served and transferred the petition to the clerk of the district court for the county in which Blackwell was incarcerated: the Eleventh Judicial District Court.

The district court denied Blackwell's petition "without prejudice" because the petition was transferred to the Eleventh Judicial District Court in error. Relying on *State v. Sustacha*, 108 Nev. 223, 826 P.2d 959 (1992), the district court reasoned that it could not overrule the Eighth Judicial District Court's order transferring the petition.

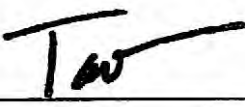
We conclude the situation surrounding Blackwell's petition is distinguishable from *Sustacha*. In *Sustacha* and the cases cited therein, a district court judge attempted to explicitly void or overrule the order of

another judge. *See id.* at 225-26, 826 P.2d at 960-61. In the instant case, however, ordering the petition transferred to the Eighth Judicial District Court would not have put the Eleventh Judicial District Court in the position of explicitly voiding or overruling another court's order. Rather, the district court would have been following the mandate of NRS 34.738(2)(b) that a petition not filed in the correct court "[m]ust be transferred by the clerk of that court to the clerk of the district court for the appropriate county." And NRS chapter 34 does not provide for the summary dismissal of a petition because it was filed in the incorrect court.

For the foregoing reasons, we conclude the district court erred by dismissing Blackwell's petition on the ground it was improperly filed in the Eleventh Judicial District Court. We therefore reverse the denial of the petition, and we remand for the district court to order the petition transferred back to the Eighth Judicial District Court pursuant to NRS 34.738(2)(b). Having concluded Blackwell is only entitled to the relief described herein, 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. Jim C. Shirley, District Judge
Marcus Jerome Blackwell
Attorney General/Carson City
Pershing County Clerk