

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY JOVAN SAIZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81812-COA

FILED

JUL 13 2021

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

ORDER OF REVERSAL AND REMAND

Billy Jovan Saiz, Jr., appeals from an order the district court denying his “postconviction motion to withdraw guilty plea pursuant to NRS 176.165” filed on June 12, 2020. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

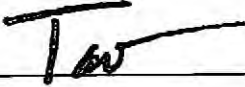
Saiz argues the district court erred by summarily denying his petition. The district court construed Saiz’s motion as a postconviction petition for a writ of habeas corpus pursuant to *Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014). The district court then summarily denied Saiz’s petition because the petition did not conform with NRS 34.735 and Saiz failed to correct his defects within a reasonable time after being ordered to do so by the district court on July 8, 2020. Saiz claims he never received a copy of the district court’s order requesting him to cure the defects. A review of the record supports Saiz’s claim that he did not receive a copy of the order because the district court’s order shows it was served on Saiz’s former counsel and not Saiz.¹

¹The district court granted Saiz’s motion to withdraw counsel on June 8, 2020.

This court ordered the State to respond to Saiz's opening brief. The State concedes the district court served the order on Saiz's former counsel but argues Saiz was put on notice regarding the defects in his pleading by the State's response to his petition, and he has not yet filed a conforming petition. Therefore, the State argues Saiz is not entitled to relief. We disagree. The district court was required to give Saiz a reasonable opportunity to cure the defects in his petition. *Harris*, 130 Nev. at 448-449, 329 P.3d at 628. Because the district court did not serve the order on Saiz, he was not given a reasonable opportunity to cure the defects. Therefore, we conclude the district court erred by denying the petition. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to properly serve Saiz with an order giving Saiz a reasonable time in which to fix the procedural defects in his petition.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 5
Billy Jovan Saiz, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk