

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARMANDO DELAROSA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85232-COA

FILED

JUL 12 2023

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Armando Delarosa, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Delarosa argues that the district court erred by denying his petition as procedurally time barred because he submitted his petition in a timely manner. The district court found that Delarosa's petition was procedurally time barred pursuant to NRS 34.726(1) because it was filed more than one year after the issuance of the remittitur on direct appeal on June 5, 2021.

The remittitur on direct appeal was issued on June 5, 2020, and Delarosa therefore had one year from that date to file his petition. *See* NRS 34.726(1). Delarosa's petition was received by the clerk on June 1, 2021, and it is the clerk's duty, not the parties', to file submitted documents. *See Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995). Thus, Delarosa's petition was timely submitted to the clerk for filing, and it was the clerk's delay in filing the petition that resulted in it being filed beyond the one-year time limit. Because the record demonstrates the district court clerk received the petition within the one-

year time limit for filing the petition, we conclude the district court erred by denying the petition as untimely.

Accordingly, we reverse the decision of the district court to deny the petition as procedurally time barred. Upon remand, the district court may exercise its discretion to permit Delarosa to file an additional supplemental petition so that he may more fully develop his underlying claims without concern for the procedural time bar. The district court should then review Delarosa's underlying claims to ascertain whether an evidentiary hearing is warranted. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (stating that a petitioner is entitled to an evidentiary hearing if he raises claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief); *see also Mann v. State*, 118 Nev. 351, 355-56, 46 P.3d 1228, 1230-31 (2002) (stating that it is improper for a district court to resolve a factual dispute based upon review of affidavits filed during the postconviction proceedings without first conducting an evidentiary hearing regarding the relevant issues). Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

¹The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Ronald J. Israel, District Judge
Armando Delarosa, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk