

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85955-COA

FILED

FEB 07 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER VACATING AND REMANDING

Adrian Powell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 10, 2021, and supplemental pleadings. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Powell argues the district court erred by denying his petition as procedurally barred. Powell filed his petition more than one year after issuance of the remittitur on direct appeal on June 5, 2020. *See Powell v. State*, No. 79037-COA, 2020 WL 2449207 (Nev. Ct. App. May 11, 2020) (Order of Reversal and Remand). Based on this, the district court concluded the petition was untimely filed and, pursuant to NRS 34.726(1), procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice.

In Powell's direct appeal from his judgment of conviction, this court issued an order of reversal and remand because the district court did not properly consider his presentence motion to withdraw his guilty plea. *See Powell*, No. 79037-COA, 2020 WL 2449207, at *1. On remand, the district court conducted an evidentiary hearing, denied Powell's motion, and issued a written order. However, the district court failed to enter either an order reinstating the prior judgment of conviction or a new judgment of


conviction that would serve as the final judgment of conviction in his criminal case. See NRS 177.015(3). It is this final judgment that would trigger the one-year period for filing a postconviction habeas petition as contemplated by NRS 34.726(1). See *Whitehead v. State*, 128 Nev. 259, 263, 285 P.3d 1053, 1055 (2012) (providing an “intermediate judgment is not sufficient to trigger the one-year period under NRS 34.726”); cf. *Johnson v. State*, 133 Nev. 571, 573-74, 402 P.3d 1266, 1271-72 (2017) (providing that there was no final judgment of conviction to trigger the one-year period outlined in NRS 34.726(1) until after a new penalty phase where the new penalty phase had been granted on direct appeal). Because there existed no final judgment of conviction to trigger the one-year period for filing a postconviction habeas petition, we conclude Powell’s petition was not procedurally time-barred. Nevertheless, in light of our holding that there is no final judgment of conviction, Powell’s petition was prematurely filed. See NRS 34.720(1) (providing a postconviction habeas petition must either request relief from a judgment of conviction or sentence or challenge the computation of time served).

For the foregoing reasons, vacate the judgment of the district court denying Powell’s postconviction habeas petition. Further, we direct the district court, upon issuance of the remittitur from this appeal, to enter an order reinstating the prior judgment of conviction or to file a new judgment of conviction. It is then up to Powell to determine whether he will appeal that judgment and/or file for postconviction relief. Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Sgro & Roger
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹In light of our disposition, we decline to address Powell's remaining claims. We note that even were we inclined to do so, the district court's order denying the postconviction habeas petition does not contain sufficient findings of fact for each of the claims raised below to enable us to review its decision. See NRS 34.830(1).