

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA, A/K/A
CEASAR SANCHEZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81745-COA

FILED

APR 09 2021

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

ORDER TO SHOW CAUSE

This is a pro se appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. The district court did not reach the merits of Ceasar Sanchaz Valencia's petition but denied it as procedurally time-barred because it was filed more than one year after issuance of the remittitur on Valencia's direct appeal. *See* NRS 34.726(1).

Our review of the record indicates the district court may have erred by concluding the petition was untimely. The remittitur on Valencia's direct appeal was issued on May 7, 2019, so Valencia's petition had to be filed by May 7, 2020, to be timely. *See id.* The district court determined Valencia's petition was untimely because it was filed on May 28, 2020. However, the petition was received by the clerk on May 4, 2020, 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). It thus appears Valencia'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. Accordingly, it would appear the district may have abused its discretion by denying the petition as untimely.

Accordingly, the State shall have 20 days from the date of this order to show cause why this court should not reverse the district court's order denying Valencia's petition as untimely and remand for the district court to consider his petition on the merits. The State's response shall not exceed 15 pages in length and must comply with the provisions set forth in NRAP 32(a). The State may cite to either the record on appeal or any appendix filed with the response.

It is so ORDERED.


_____, C.J.
Gibbons

cc: Ceasar Sanchaz Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk