

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE W. LUSTER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43301

FILED

NOV 02 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

ORDER OF REVERSAL AND REMAND BY

*J. Bloom*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant George W. Luster, Jr.'s post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On May 1, 1998, the district court convicted Luster, pursuant to a jury verdict, of one count each of first-degree murder with the use of a deadly weapon, discharging a firearm at or into a structure, burglary while in possession of a firearm, conspiracy to commit first-degree kidnapping, first-degree kidnapping with the use of a deadly weapon, extortion with the use of a deadly weapon, robbery with the use of a deadly weapon, child endangerment, and two counts of coercion with the use of a deadly weapon. The district court sentenced Luster to serve multiple life terms in the Nevada State Prison with and without the possibility of parole and several definite terms of confinement. This court

affirmed Luster's judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on January 25, 2000.

On December 27, 2000, Luster filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. However, on May 16, 2001, the district court held an ex parte hearing in which it apparently accepted written responses to Luster's claims from the State and Luster's trial and appellate counsels. On August 3, 2001, the district court denied Luster's petition, and Luster appealed.

On appeal, we concluded that, pursuant to Gebers v. State<sup>2</sup> and Mann v. State,<sup>3</sup> the district court violated Luster's statutory rights when it conducted an ex parte hearing and improperly expanded the record by considering written responses by Luster's former attorneys to the claims Luster raised in his petition. We reversed the district court's order denying Luster's petition and remanded the matter to a different district court judge for an evidentiary hearing on the merits of Luster's

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<sup>1</sup>Luster v. State, 115 Nev. 431, 991 P.2d 466 (1999).

<sup>2</sup>118 Nev. 500, 50 P.3d 1092 (2002).

<sup>3</sup>118 Nev. 351, 46 P.3d 1228 (2002).

claims.<sup>4</sup> We also ordered the district court to secure Luster's presence at the hearing.

On May 6, 2004, after numerous continuances, the district court held a hearing regarding Luster's petition, with Luster present. At the hearing, the district court announced that the "ruling of the Court was that the record belies [Luster's] request for [sic] evidentiary hearing; therefore denied." We conclude that the district court abused its discretion in failing to conduct an evidentiary hearing, as ordered by this court.

In our order of remand we directed the district court to conduct an evidentiary hearing on the merits of the claims Luster raised in his petition and to secure his presence at the hearing. It was not incumbent upon Luster to request an evidentiary hearing to have his claims heard. Accordingly, we again remand this matter to the district court for an evidentiary hearing on the merits of all of the claims Luster raised in his petition. We further order that the evidentiary hearing be held in Luster's presence. We encourage the district court to conduct the evidentiary hearing as expeditiously as its calendar will allow.<sup>5</sup>


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<sup>4</sup>Luster v. State, Docket Nos. 37939, 37444, 37679, 37939, 38013 (Order of Reversal and Remand, August 22, 2002).

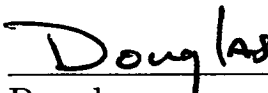
<sup>5</sup>See NRS 34.740.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>7</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. John S. McGroarty, District Judge  
George W. Luster Jr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.