

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. CONNORS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE,
Respondents.

No. 46025

FILED

JAN 17 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS IN PART
AND DENYING PETITION IN PART

This is a proper person petition for a writ of mandamus in which petitioner challenges the district court's decision to take his post-conviction petition for a writ of habeas corpus off calendar.

Petitioner asserts that he filed a proper person post-conviction petition for a writ of habeas corpus in the district court on August 6, 1999. The April 24, 2000 district court minutes state,

The Court stated Mr. [William] Terry was counsel, and he may elect to represent his view of this representation, or he may decline, at which time upon his decline, the defendant's petition will not be entertained as to the extent that it alleges ineffective assistance of counsel. COURT ORDERED, OFF CALENDAR.

In the instant petition, petitioner seeks, among other things, an order compelling the district court to place his petition back on calendar and to resolve the petition.¹

The district court may not resolve a post-conviction petition for a writ of habeas corpus by simply taking the petition off calendar. A decision taking the petition off calendar is not a final decision as the district court retains the jurisdiction to place the petition back on calendar for review. There is no authority in NRS chapter 34 allowing the district court to take a petition off calendar in lieu of resolving the petition on the merits or other procedural grounds. NRS 34.740 requires the district court to provide an expeditious examination of a post-conviction petition for a writ of habeas corpus. NRS 34.830 provides that any final order that disposes of a post-conviction petition for a writ of habeas corpus must contain specific findings of fact and conclusions of law and that service of notice of entry of the order be performed by the clerk of the district court. NRAP 4(b)(2) requires the district court to enter any order finally resolving a post-conviction petition for a writ of habeas corpus within 20 days of the district court's oral pronouncement of a final decision. Petitioner may not file an appeal to this court unless the district court has entered a final decision on the petition.²

Because it appeared that petitioner had set forth an issue of arguable merit and that petitioner may have no plain, speedy and

¹In connection with his primary argument, petitioner also seeks an order directing the district court to appoint post-conviction counsel and to require petitioner's presence at an evidentiary hearing. This court denies the petition as it relates to these requests.

²See NRS 34.575; NRAP 4(b)(1).

adequate remedy in the ordinary course of the law, this court directed the State, on behalf of the district court, to show cause why a writ should not issue directing the district court to place the petition back on calendar for resolution. The State filed a timely response to this court's order stating that it did not oppose an order granting the petition in the instant case. Therefore, we grant the petition in part with instructions for the district court to place petitioner's post-conviction petition for a writ of habeas corpus on the district court's calendar for resolution. If the district court determines that an evidentiary hearing is necessary, the district court shall conduct an evidentiary hearing in the presence of petitioner.³ It is within the discretion of the district court to appoint counsel to assist petitioner in the post-conviction proceedings.⁴ Because Mr. Terry was petitioner's trial counsel, Mr. Terry may not represent petitioner in any fashion in the post-conviction proceeding. Mr. Terry may, however, be called as a witness if an evidentiary hearing is required in the instant case. We note that petitioner waived any attorney-client privilege relating to Mr. Terry's representation by the filing of his post-conviction petition for a writ of habeas corpus.⁵ Accordingly, we


ORDER the petition GRANTED in part AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to place petitioner's post-conviction petition

³See Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (2002).

⁴See NRS 34.750.

⁵See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

for a writ of habeas corpus on the district court's calendar for resolution and the petition DENIED in all other respects.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Timothy W. Connors
William Terry, Esq.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk