

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORLANDO LOPEZ PASTRANA, AKA
ORLANDO PASTRANA LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47546

FILED

APR 24 2007

JANETTE BLOOM
CLERK OF SUPREME COURT
BY *J. Carroll*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court dismissing appellant Orlando Pastrana's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet Berry, Judge.

On November 13, 2002, the district court convicted Pastrana, pursuant to a jury verdict, of one count of murder by making available a controlled substance causing death. The district court sentenced Pastrana to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on June 2, 2004.

On December 1, 2004, Pastrana filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an answer to the petition and a motion requesting the district

¹Lopez v. State, Docket No. 40659 (Order of Affirmance, May 5, 2004). Pastrana's direct appeal was docketed in this court under his alias Orlando Pastrana Lopez.

court to appoint counsel to represent Pastrana. On June 9, 2006, the district court dismissed Pastrana's petition on the basis that Pastrana "failed to comply with the form specified in NRS 34.735." The district court also denied the State's motion to appoint counsel as moot. This appeal followed.

Our review of the record on appeal reveals that the district court erred in dismissing Pastrana's petition based on the finding that it was not in the proper form required by NRS 34.735. Although the petition did not properly answer all questions set forth in NRS 34.735 and some answers were largely unintelligible, we conclude that Pastrana's petition substantially complied with that statute.² The petition contained a proper caption, answered the majority of the questions on the form, set forth Pastrana's claims, and was verified.³ To the extent that Pastrana did not answer some of the questions on the form, or answered questions improperly, these were amendable, and not jurisdictional, defects.⁴ Accordingly, we reverse the district court's dismissal of Pastrana's petition and remand this matter to the district court for consideration of Pastrana's petition on the merits. If necessary, the district court may

²See NRS 34.730(2) (providing that a petition for a writ of habeas corpus must be in substantially the form set forth in NRS 34.735).

³See NRS 34.735.

⁴Cf. Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004) (holding that inadequate verification of a petition was not a jurisdictional defect and a petitioner may cure nonjurisdictional defects by amendment even after the statutory time limit for filing the petition has lapsed).

order Pastrana to file an amended petition that accurately answers all questions on the form.⁵

On August 26, 2005, the State filed a motion to appoint counsel to represent Pastrana on his post-conviction petition. The State noted that the allegations contained in the petition were largely unintelligible and, therefore, the State requested the appointment of counsel to represent Pastrana so that counsel could raise intelligible claims. The district court denied the motion as moot when dismissing Pastrana's petition. Because we reverse the district court's dismissal of Pastrana's petition, we also reverse the denial of the State's motion for the appointment of counsel. The district court shall consider the State's motion for the appointment of counsel on its merits and determine whether the appointment of counsel is warranted.⁶

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Pastrana is entitled only to the relief granted and that briefing and oral argument are unwarranted.⁷ Accordingly, we

⁵See id.

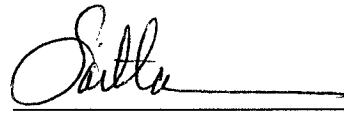
⁶See NRS 34.750.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁸


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Janet J. Berry, District Judge
Orlando Lopez Pastrana
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁸We have considered all proper person documents filed or received in this matter. We conclude that Pastrana is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.