

IN THE SUPREME COURT OF THE STATE OF NEVADA


SHERWOOD GALE JORDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49075

FILED

JAN 15 2008

ORDER OF REVERSAL AND REMAND

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On August 10, 2004, the district court convicted appellant, pursuant to a jury verdict, of twenty counts of sexual assault of a minor under the age of 14 and twenty counts of lewdness with a child under the age of 14. The district court sentenced appellant to serve five consecutive terms of life in Nevada State Prison with the possibility of parole after 10 years, plus thirty-five additional concurrent terms of imprisonment for the remaining counts. This court affirmed appellant's judgment of conviction.¹ The remittitur issued on November 29, 2005.

On November 13, 2006 appellant 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

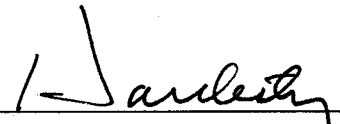
¹Jordan v. State, Docket No. 43927 (Order of Affirmance, November 2, 2005).


district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 12, 2007, the district court denied appellant's petition. This appeal followed.

Our review of the record on appeal revealed that the district court erroneously denied appellant's petition without appointing counsel. In his petition, appellant argued that he needed counsel to be able to sufficiently articulate his claims because he was incompetent and unable to proceed on his own due to his mental infirmity. NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: indigency; the severity of the consequences to the petitioner; the difficulty of the issues presented; whether the petitioner is unable to comprehend the proceedings; and whether counsel is necessary to proceed with discovery.

The record contained a significant amount of evidence supporting appellant's present claim of incompetence. The record on appeal contained an affidavit signed by prison law clerk William Henderson attesting to appellant's inability to remember or recall his trial or the circumstances surrounding his conviction. This evidence is corroborated by other evidence in the record. Specifically, during appellant's trial, his counsel made several statements indicating that there was cause to doubt appellant's competency. We therefore reverse the district court's denial of appellant's petition and remand this appeal for the appointment of counsel to assist appellant in the supplementing of a post-conviction petition for a writ of habeas corpus, and we

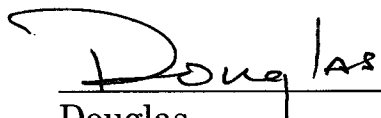
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Parraguirre

DOUGLAS, J., concurring:

I concur with remanding this matter to the district court. However, I believe that the decision of whether to appoint counsel in this case is dependent upon a determination of appellant's competency; therefore, I would remand with directions that a competency hearing be conducted prior to the appointment of counsel.


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Sherwood Gale Jordan
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk