


IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER JOSEPH MUNOZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50306

FILED

MAY 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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; Donald M. Mosley, Judge.

On December 8, 2006, the district court convicted appellant, pursuant to an Alford¹ plea, of attempted lewdness with a child under the age of 14. The district court sentenced appellant to serve a term of 48 to 144 months in the Nevada State Prison. No direct appeal was taken.

On May 22, 2007, 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, the district court declined to appoint counsel to represent appellant. On October 2, 2007,

¹North Carolina v. Alford, 400 U.S. 25 (1970).

the district court denied appellant's petition after conducting an evidentiary hearing. This appeal followed.

Our review of the record on appeal revealed that the district court erroneously denied appellant's petition after conducting an evidentiary hearing without appointing counsel. 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: the petitioner's 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 determination of whether counsel should be appointed is not dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief.

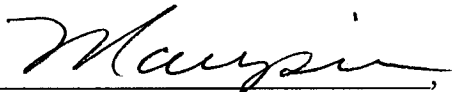
The record on appeal does not support the district court's decision to proceed with an evidentiary hearing without appointing post-conviction counsel. In his petition, appellant raised several claims of ineffective assistance of counsel, including claims that his counsel was ineffective for (1) failing to file a notice of appeal despite appellant's timely request that counsel do so, (2) failing to ask for probation at appellant's sentencing hearing, (3) failing to investigate family members concerning a recantation of the victim, (4) failing to compel the victim to undergo a psychological evaluation, and (5) failing to advise appellant that he faced lifetime supervision. Appellant also claimed that he was actually innocent. Appellant requested the appointment of counsel at the evidentiary hearing conducted on the aforementioned claims. He

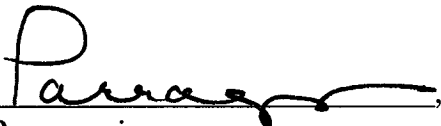
indicated that he was unfamiliar with the law and procedure involved in litigating his claims. Notably, he stated that he did not know that his father and wife needed to be present to testify at the hearing in addition to presenting their affidavits. Further, appellant stated that his father could not have even attended the hearing at that time because appellant's mother had undergone heart surgery prior to the hearing. The evidentiary hearing was essential to the litigation of many of his claims as the facts necessary to prove those claims fell outside of the record. While some of the issues, such as appellant's appeal deprivation claim, were relatively straightforward, others, such as appellant's claim regarding his counsel's investigation and potential motion to compel a psychological examination of the victim, required more expertise regarding those issues to sufficiently develop the underlying facts. The district court's failure to appoint counsel deprived appellant of a meaningful opportunity to litigate his claims at the evidentiary hearing. 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 litigation of his claims.

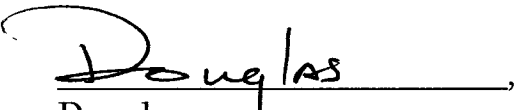
Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.² Accordingly, we

²See 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.³

 J.
Maupin

 J.
Parraguirre

 J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Peter Joseph Munoz Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

³This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.