

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LYONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50771

FILED

MAY 07 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
SK *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

On November 24, 2003, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault on a minor under the age of fourteen, and eight counts of lewdness with a child under the age of fourteen. The district court sentenced appellant to ten consecutive terms of life in the Nevada State Prison without the possibility of parole. This court affirmed the jury's verdict on direct appeal, but concluded that the district court had improperly enhanced appellant's sentence pursuant to NRS 200.366(4) and NRS 201.230(3) and remanded the matter for a new sentencing hearing. Lyons v. State, Docket No. 42426 (Order Affirming in Part, Reversing in Part and Remanding, March 23, 2006). On remand, the district court sentenced appellant to two

consecutive sentences of life with the possibility of parole after 20 years, and an additional eight consecutive sentences of life with the possibility of parole after 10 years.

On November 6, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On December 20, 2006, appellant filed a motion to dismiss the petition without prejudice, arguing that the petition was mistakenly filed. The district court granted the motion on January 18, 2007, but stated that if appellant did not file an amended petition within 30 days, the petition would be dismissed with prejudice. Appellant filed a second proper person post-conviction petition for a writ of habeas corpus on February 13, 2007. Appellant also filed a motion for the appointment of counsel and an accompanying affidavit of indigency. The State opposed both the motion and the petition. The district court declined to appoint counsel to represent appellant, but conducted an evidentiary hearing on December 7, 2007. On January 3, 2008, the district court denied the petition. This appeal followed.

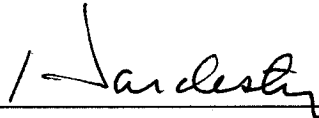
NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of those issues 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

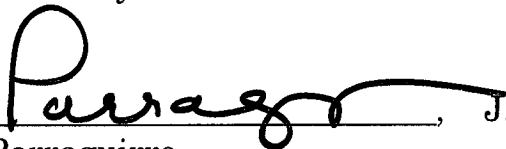
appointed is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief.

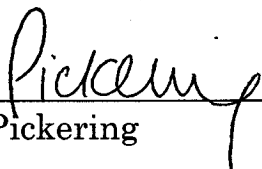
Appellant's petition arose out of a lengthy trial with five separate minor victims, and a number of potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving ten consecutive terms of life in prison with the possibility of parole in approximately 120 years. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. Appellant had also been granted permission to proceed in forma pauperis. Under these circumstances, the district court's failure to appoint post-conviction counsel deprived appellant of a meaningful opportunity to litigate his petition. As appellant is serving a significant sentence, is indigent, and there are potentially complex issues, we reverse the district court's denial of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings.

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

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Pickering

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

¹We have considered all proper person documents filed or received in this matter. We conclude that appellant 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.