

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MICHAEL FORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50948

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

On May 25, 2004, the district court convicted appellant Mark Ford, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon (Count 1) and burglary while in possession of a firearm (Count 2). The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years, plus an equal and consecutive term for the deadly weapon enhancement for Count 1, and consecutive term of 22 to 96 months for Count 2. This court affirmed the judgment of conviction on appeal. Ford v. State, 122 Nev. 796, 138 P.3d 500 (2006). The remittitur issued on October 24, 2008.

On October 18, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On January 24, 2007, appellant filed a motion for the appointment of post-conviction counsel and accompanying affidavit of indigency. Pursuant to NRS 34.750 and 34.770, the district court

declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 23, 2008, the district court denied the petition. This appeal followed.

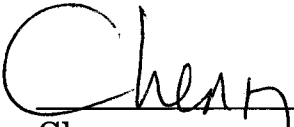
Our review of the record on appeal reveals that the district court abused its discretion in denying appellant's petition without appointing counsel. NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of 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.

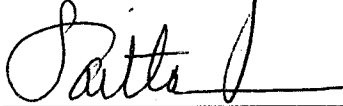
Appellant's petition arose out of a lengthy trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving two consecutive terms of life in prison with the possibility of parole after ten years. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. Appellant had been granted permission to proceed in forma pauperis. Further, appellant was 15 years old at the time of the offense and 19 when the instant petition was filed. The district court's failure to appoint post-conviction counsel deprived appellant of a meaningful opportunity to litigate. 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


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Mark Michael Ford
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.