

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD ANTHONY BUDD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50972

**FILED**

SEP 25 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; David B. Barker, Judge.

On March 1, 2006, the district court convicted appellant, pursuant to a jury verdict, of three counts of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant's judgment of conviction and sentence were affirmed on appeal. Budd v. State, Docket No. 46977 (Order of Affirmance, January 9, 2007). The remittitur issued on February 6, 2007.

On September 21, 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 and 34.770, the district court declined to appoint counsel to represent appellant or to

conduct an evidentiary hearing. On January 7, 2008, the district court denied appellant's petition. This appeal followed.

Appellant raised numerous claims in his petition including twelve claims of ineffective assistance of counsel: (1) failing to investigate appellant's innocence; (2) failing to investigate the identification by Celeste Palau; (3) failing to object to bad act evidence; (4) failing to conduct scientific testing on blood stains; (5) failing to disclose a conflict of interest between counsel and appellant prior to the first day of trial; (6) failing to keep an unavailable witness's testimony from the preliminary hearing from being read to the jury; (7) conceding appellant's guilt in closing arguments; (8) failing to secure a handwriting expert; (9) failing to object to judicial misconduct; (10) failing to object to the instruction on first-degree murder; (11) failing to object to the instruction on credibility; and (12) failing to object to the reasonable doubt instruction. Appellant further claimed that he received ineffective assistance of appellate counsel because appellate counsel failed to raise the above underlying claims on direct appeal and failed to "federalize" his claims. Appellant also claimed that the State committed prosecutorial misconduct because the State failed to disclose a deal between the State and a key witness and because the State failed to call a witness referenced in opening statements. Finally, appellant claimed that the cumulative errors committed entitled him to relief.

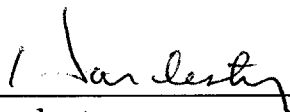
Our review of the record on appeal reveals post-conviction counsel should have been appointed in the instant case. NRS 34.750


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 and several of appellant's claims may require the development of facts outside the record. Appellant was represented by appointed counsel at trial. Appellant is serving six consecutive terms of life in prison without the possibility of parole and was facing the death penalty. 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*. The district court's failure to appoint post-conviction counsel deprived appellant of a meaningful opportunity to litigate his claims in the instant case. 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.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. David B. Barker, District Judge  
Glenford Anthony Budd  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk