

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. MCLAUGHLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51136

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
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; Donald M. Mosley, Judge.¹

On October 6, 2004, the district court convicted appellant Michael McLaughlin, pursuant to a jury verdict, of three counts of attempted murder with the use of a deadly weapon, one count of battery with the use of a deadly weapon, and one count of burglary with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 52 to 130 years in the Nevada State Prison. This court affirmed the judgment of conviction on appeal. McLaughlin v. State, Docket No. 44225 (Order of Affirmance, February 15, 2006). The remittitur issued on March 14, 2006.

¹Judge Mosley signed the order denying appellant's petition for a writ of habeas corpus. Judge Joseph T. Bonaventure presided over the evidentiary hearing in this matter and orally denied the petition.

On December 27, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 1, 2006, appellant filed a motion for the appointment of post-conviction counsel. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellant. On November 16, 2007, the district court held an evidentiary hearing. On January 31, 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 a lengthy sentence. 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, at the evidentiary hearing, appellant stated he did not know how to proceed because he was not an attorney and he did not ask

any questions of witnesses at the evidentiary hearing. 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.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

²We 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.

cc: Hon. Donald M. Mosley, District Judge
Hon. Joseph T. Bonaventure, District Judge.
Michael T. McLaughlin
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk