


IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. CONNORS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51247

FILED

NOV 05 2009

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 2, 1994, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon and robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole for the murder count and two consecutive terms of 15 years for the robbery count. The terms for the murder and robbery counts were ordered to run consecutively. Appellant's judgment of conviction and sentence were affirmed on appeal. Connors v. State, Docket No. 27113 (Order of Affirmance, July 28, 1998). Remittitur issued on September 4, 1998.

On August 6, 1999, 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 August 17, August 24, and September 7, 2007, the district court conducted an evidentiary

hearing on the petition. On February 25, 2008, the district court denied appellant's petition. This appeal followed.

Appellant raised over fifty claims in his petition claiming ineffective assistance of trial counsel, ineffective assistance of appellate counsel, prosecutorial misconduct, governmental misconduct, and cumulative error.

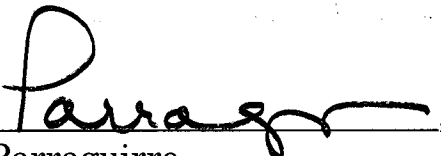
Our review of the record on appeal reveals that post-conviction counsel should have been appointed in the instant case. NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of those issues presented, whether "[t]he petitioner is unable to comprehend the proceedings," and whether "[c]ounsel 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.

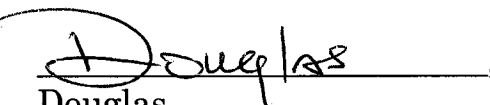
Appellant's petition arose out of a month long trial with potentially complex issues requiring the development of facts outside the record. Appellant was represented by appointed counsel at trial. Appellant is serving two consecutive terms of life in prison without the possibility of parole and was facing the death penalty. Appellant also 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 was not allowed to subpoena or call witnesses to testify. 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 a different district court judge for proceedings consistent with this order.¹


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. T. Arthur Ritchie, Chief Judge
Hon. Donald M. Mosley, District Judge
Timothy W. Connors
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
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.