

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOUNIR A. KUBLAWI A/K/A TOUNI
ALEXANDER KARKAWI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51431

FILED

JUL 23 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. V. [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; Stewart L. Bell, Judge.

On December 7, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count each of forgery and possession of a credit or debit card without the cardholder's consent. Appellant was adjudicated a habitual criminal and the district court sentenced appellant to serve two concurrent terms of 8 to 20 years in the Nevada State Prison. Appellant's appeal from his judgment of conviction and sentence was dismissed for lack of jurisdiction. Kublawi v. State, Docket No. 50639 (Order Dismissing Appeal, March 27, 2008).

On July 24, 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, the district court declined to appoint counsel to represent appellant. On September 25, 2007, the district court held an ex parte hearing where it received testimony from appellant's former trial counsel on the merits of the case.

On March 21, 2008, the district court denied appellant's petition. This appeal followed.

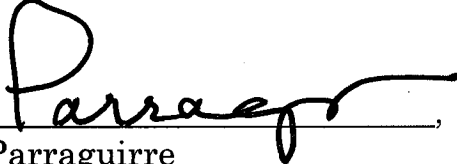
This court held in Gebers v. State, 118 Nev. 500, 504-05, 50 P.3d 1092, 1094-95 (2002), that a petitioner's statutory rights are violated when a district court conducts an evidentiary hearing regarding the merits of the claims raised in a petition when the petitioner is not present at the hearing nor represented by post-conviction counsel. Thus, pursuant to Gebers, the district court violated appellant's statutory rights when it conducted an ex parte evidentiary hearing on the claims appellant raised in his petition. Therefore, we reverse the order of the district court denying appellant's petition and remand this matter for an evidentiary hearing on the merits of the claims appellant raised in his petition.¹ The district court shall provide for appellant's presence at the hearing. See NRS 34.390. In determining whether to appoint counsel to represent petitioner, the district court should consider the severity of the consequences petitioner faces, difficulty of the issues, petitioner's ability to comprehend the proceedings, and whether "[c]ounsel is necessary to proceed with discovery."² NRS 34.750.

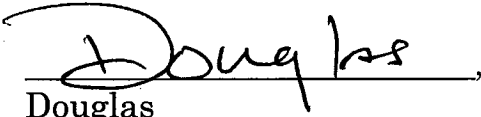
¹We note that in most cases, this court would order this matter to be remanded to a different district court judge. However, Judge Stewart Bell is no longer on the bench, and therefore, we are not directing the matter to be remanded to a different district court judge in these circumstances.

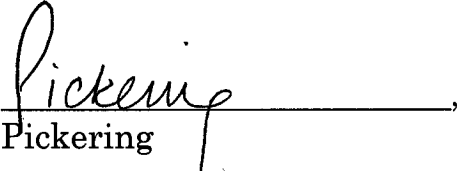
²Appellant's first claim in his petition was that counsel was ineffective for failing to investigate whether appellant was competent to stand trial. In addition, it appears that appellant is continuing to claim that he is not competent as he suffers from memory loss. Therefore, the district court may wish to consider appointing counsel to assist appellant with his petition.

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.³


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Mounir A. Kublawi
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

³We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.