

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MANUEL ALCARAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53364

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
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.¹ Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In his petition filed on January 13, 2009, appellant raised a number of claims including ineffective assistance of trial and appellate counsel. The district court denied the petition without appointing counsel and without conducting an evidentiary hearing. This was error.

NRS 34.750 provides for the discretionary appoint 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

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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 two day trial after which he was convicted of second-degree murder. Appellant was represented by appointed counsel at trial. Appellant is serving two consecutive life sentences. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented meaningful litigation of the petition. Thus 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. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Juan Manuel Alcaraz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk