

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFF N. ROSE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53845

**FILED**

**MAR 10 2010**

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; Michael Villani, Judge.

In his petition filed on December 1, 2008, appellant raised a number of claims of 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 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 five-day-trial with potentially complex legal issues and factual issues lying outside the record requiring development.<sup>1</sup> 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 a 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

---

<sup>1</sup>For instance, appellant claimed that his trial counsel was ineffective for failing to object to the numerous bench/hallway conferences that were not transcribed. Those conferences appear to involve a number of evidentiary decisions. Because appellant was not present and those conferences were not transcribed, this court cannot resolve the issue of ineffective assistance of counsel without an expansion of the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (holding that an evidentiary hearing is required where the petitioner raises claim supported by specific facts that are not belied by the record, which if true, would entitle him to relief).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Jeff N. Rose  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>2</sup>We 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.