

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HENRY GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54836

FILED

APR 07 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

The petition, filed on June 3, 2009, was largely unintelligible. The district court denied the petition without appointing counsel. In denying the petition, the district court stated the denial was without prejudice for appellant to re-file and make a showing that the petition was not frivolous. Having reviewed the record on appeal, we conclude that the district court abused its discretion in failing to appoint post-conviction 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,

<sup>1</sup>This 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).

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 trial with potentially complex legal issues and factual issues lying outside the record requiring development.<sup>2</sup> Appellant was represented by appointed counsel at trial. Appellant is serving two consecutive terms of four to ten years in prison. In addition, appellant requested 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

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

<sup>2</sup>Appellant appeared to raise claims regarding investigation and his competency proceedings.

cc: Hon. Kathy A. Hardcastle, District Judge  
James Henry Green  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk