

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERIBERTO TORIBIO-RUIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54949

**FILED**

OCT 27 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND


This is an appeal from an order of the district court denying a January 7, 2008, post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

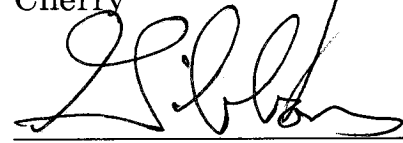
In its order filed October 27, 2009, the district court dismissed appellant's petition because appellant did not respond to the State's motion to dismiss. See NRS 34.750(4). The State's motion was served only on the court-appointed attorney, not on appellant. Upon this court's order of limited remand, filed June 8, 2011, the district court held an evidentiary hearing and found that although post-conviction counsel had been appointed to assist appellant, the attorney had never been aware of the appointment. Appellant thus had no legal representation for his petition nor an opportunity to respond to the State's motion. We therefore conclude that the district court erred in granting the State's motion to dismiss.

The district court's order also listed reasons why each of appellant's claims should fail on its face. However, because counsel never knew he had been appointed, appellant's proper person petition was not

supplemented, resulting in its summary dismissal. This court agrees with the district court's prior determination that the factors set forth in NRS 34.750(1) warranted the discretionary appointment of post-conviction counsel in this matter to ensure meaningful litigation of the petition. Accordingly, given the unique circumstances of this case, we

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

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Connie J. Steinheimer, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk  
Heriberto Toribio-Ruiz