

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET JOYCE MODELFINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55157

FILED

JUN 09 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.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed a timely petition on June 30, 2009. The district court denied the petition without conducting an evidentiary hearing or appointing counsel. We cannot affirm the order of the district court at this time for the reasons discussed below.

Our review of the record on appeal reveals that the district court abused its discretion in denying appellant's petition without appointing counsel. NRS 34.750 provides for the discretionary

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).

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 lengthy trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of post-conviction counsel and claimed that she was indigent. Appellant had been granted permission to proceed in forma pauperis. The district court's failure to appoint post-conviction counsel deprived appellant of a meaningful opportunity to litigate the petition. As appellant is serving a significant sentence, is indigent, and there are potentially complex issues, 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.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Margaret Joyce Modelfino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.