

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAVELL ROBERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55115

LAVELL ROBERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55186

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE IN DOCKET NO. 55115 AND REVERSAL
AND REMAND IN DOCKET NO. 55186

These are proper person appeals from orders of the district court denying motions to modify and correct the sentence and a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

¹These appeals have 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).

Docket No. 55115

In his motions filed on November 2, 2009, and November 3, 2009, appellant claimed that the district court relied on inaccurate information in the presentence investigation report in sentencing him and that the sentence was illegal because he should have received a five to twelve year sentence. Appellant failed to demonstrate that the district court relied upon any material mistakes of fact about his criminal record that worked to his extreme detriment and failed to demonstrate that his sentence was facially illegal or that the district court was without jurisdiction. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Accordingly, we affirm the order of the district court denying these motions.

Docket No. 55186

In his petition filed on October 19, 2009, appellant raised a number of claims challenging the representation he received at trial and on appeal. 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 trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant was adjudicated a habitual criminal and sentenced to serve terms totaling 67 to 168 months. 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

ORDER the judgment of the district court in Docket No. 55115 AFFIRMED AND we ORDER the judgment of the district court in Docket No. 55186 REVERSED and we REMAND this matter to the district court for proceedings consistent with this order.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Lavell Roberson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk