

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD RAY THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55272

FILED

JUN 09 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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

In his petition filed on September 24, 2009, appellant challenged the validity of a judgment of conviction based on a jury verdict. The district court denied the petition without appointing counsel. This was error.

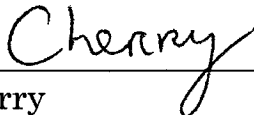
NRS 34.750 provides for the discretionary appointment of post-conviction counsel and sets forth the following factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of those issues presented, whether the petitioner is unable to comprehend the proceedings, and whether counsel is necessary to proceed

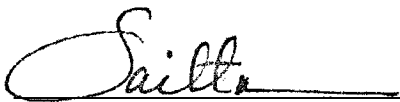
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


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 jury trial. Appellant was represented by appointed counsel at trial. Appellant is serving consecutive terms totaling 118 months to 336 months. In addition, appellant moved for the appointment of counsel, claimed that he was indigent, and provided a financial certificate from the prison. 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.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Donald Ray Thomas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk