

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSVALDO LOPEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55546

FILED

SEP 10 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; Elissa F. Cadish, Judge.

Appellant filed a timely petition on November 24, 2009. The district court denied the petition without conducting an evidentiary hearing or appointing counsel. For the reasons discussed below, we conclude the district court erred in denying the petition without appointing 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, 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 Luckett 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, who is indigent and serving a significant sentence, moved for the appointment of post-conviction counsel. His petition arose out of a week-long jury trial during which he was represented by appointed counsel. Appellant raised several issues, some of which may require the development of facts outside the record. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition. We therefore 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


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

²We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.

cc: Hon. Elissa F. Cadish, District Judge
Osvaldo Lopez Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk