

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DREW ALMY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56213

FILED

JAN 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Michelle Leavitt, Judge.

Appellant filed a timely petition on December 11, 2009. The district court denied the petition without 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

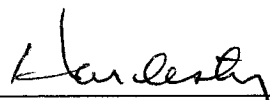
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

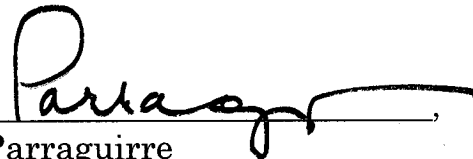
with discovery. The determination of whether counsel should be appointed is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief.

Appellant, who is indigent, moved for the appointment of post-conviction counsel. His petition arose out of a jury trial during which he was represented by appointed counsel. Appellant raised several issues, some requiring 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.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Kevin Drew Almy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk