

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAQUIN ERNESTO HERNANDEZ-
AYALA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56470

FILED

DEC 13 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; Michelle Leavitt, Judge.

Appellant filed a timely petition on April 6, 2010. 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

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).

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, who is indigent and serving a significant sentence, moved for the appointment of post-conviction counsel. His petition arose out of a jury trial during which he was represented by counsel. Appellant raised several issues, some implicating an impaired ability to comprehend the proceedings and others 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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Joaquin Ernesto Hernandez-Ayala
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk