

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59264

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY: *Angela*
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; Jerome T. Tao, Judge.

Appellant filed a timely petition on June 9, 2011. The district court denied the petition without appointing counsel. We conclude that the district court erred in denying the petition without appointing counsel for the reasons discussed below.

NRS 34.750(1) 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

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).

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 lengthy trial with potentially complex legal issues and several factual issues that appear to require development outside the record. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel.² 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.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

²While we note that appellant failed to allege that he was indigent on the face of the petition, the documents before this court indicate that he was indigent throughout the trial court proceedings as he was represented by appointed counsel. Failure to allege indigency on the face of the petition was a curable defect and should not serve as a basis for denying the appointment of counsel.

cc: Hon. Jerome T. Tao, District Judge
Bryan Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk