

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNELIUS EUGENE ROGERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59335

**FILED**

MAY 09 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Anderson*  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Appellant filed a timely petition on May 23, 2010. The district court denied the petition without conducting an evidentiary hearing or appointing counsel. We conclude that the district court erred in denying the petition without appointing counsel for the reasons discussed below.

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

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<sup>1</sup>This 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.

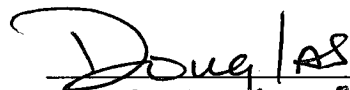
Appellant moved for the appointment of counsel and included an inmate account statement demonstrating his indigency. Appellant was convicted of multiple offenses, including first-degree kidnapping with substantial bodily harm and first-degree murder, after a lengthy capital murder trial. Appellant's sentence was significant in that he was sentenced to serve two consecutive terms of life without the possibility of parole. Appellant was represented by appointed counsel at trial. While many of the claims raised by appellant in the petition were based on legal arguments and not difficult to resolve, appellant raised a potentially complex issue relating to whether counsel provided effective assistance of counsel in conceding to appellant's guilt of burglary, one of the enumerated felonies in this case for the felony-murder theory of first-degree murder, and the advisability of that concession based on trial counsel's admission that the argument was "novel" and was ultimately rejected by the district court in the settling of the jury instructions, after the concession had already occurred.<sup>2</sup> See Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994). The failure to appoint post-conviction counsel


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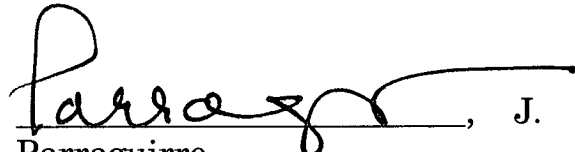
<sup>2</sup>The State asserted below that there was nothing in the record to indicate that appellant disavowed this strategy. Absence of statements disavowing the strategy does not equate to a defendant's consent to concession of guilt, particularly in light of appellant's not guilty plea to the crime of burglary. No evidentiary hearing was conducted so it remains unclear whether this strategy was with the defendant's consent. It also remains unclear whether this strategy was reasonable in view of the fact that burglary was one of the enumerated felonies set forth in the felony-murder theory.

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.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Chief Judge, Eighth Judicial District Court  
Hon. Joseph T. Bonaventure, Senior Judge  
Cornelius Eugene Rogers  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk