

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO J. WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59654

**FILED**

JUN 14 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

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; Abbi Silver, Judge.

Appellant filed an untimely petition in proper person on August 9, 2011.<sup>2</sup> In his petition, appellant alleged that he had newly

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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).

<sup>2</sup>To the extent that the petition challenged the validity of the original judgment of conviction and sentence, the petition was filed more than two years after entry of the judgment of conviction on May 12, 2009. NRS 34.726(1). To the extent that appellant challenged the order revoking probation and the dismissal of his appeal from the order revoking probation, the petition was untimely from these decisions entered on September 18, 2009, and March 11, 2010. See Williams v. State, Docket No. 54771 (Order Dismissing Appeal, March 11, 2010).

discovered evidence that the victim recanted her story and that he was actually innocent due to the recantation. The district court denied the petition without appointing post-conviction counsel or conducting an evidentiary hearing.

The record belies appellant's claim that the recantation was newly discovered for purposes of demonstrating good cause in filing his August 9, 2011, petition as the recantation was raised at least twice previously in motions filed in the district court. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). We affirm this portion of the district court's decision to reject this good cause argument.

The district court's findings regarding the actual innocence claim, however, are not supported by the record. The district court determined that the actual innocence claim failed because the district court had already determined in proceedings on a prior motion to withdraw a guilty plea that the victim had recanted in February 2009. The fact that the recantation was not allegedly raised in a timely fashion does not resolve a claim of actual innocence presented to overcome application of the procedural bars. Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Further, the date referred to in the prior proceedings refers to the date that appellant entered his guilty plea and there is no indication of a recantation made on

that date.<sup>3</sup> While appellant admitted to the facts supporting his pleas to coercion and possession of a stolen vehicle, the fact that he entered a guilty plea does not preclude him from raising a claim of actual innocence. Bousley v. United States, 523 U.S. 614, 616, 623-24 (1998). The district court has never conducted an evidentiary hearing on the credibility and weight to be given to the victim's recantation. For the reasons discussed below, we conclude that the district court abused its discretion in denying this 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 with discovery.


Appellant's petition raised a potentially complex issue relating to actual innocence—particularly in light of the fact that no court has ever considered the credibility or weight of the victim's recantation. Appellant was represented by appointed counsel at trial. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition. Thus, we reverse the district court's denial of


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<sup>3</sup>Neither of the victim's letters was dated February 2009; rather, both letters are dated in 2010.

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 AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Abbi Silver, District Judge  
Antonio J. Williams  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk