

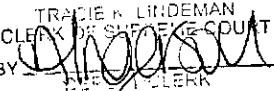
IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO A. IRIVE A/K/A RICARDO
IRIVE AVALOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62609

FILED

JAN 24 2014

TRACIE R. LINDEMAN
CLERK OF SUPREME COURT
BY  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; Kathleen E. Delaney, Judge.

Appellant filed a timely petition on August 8, 2012. 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

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).

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's petition arose out of a trial at which he was represented by appointed counsel, and he is serving a significant sentence. Appellant raised claims in his petition that may require factual development outside the record. 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 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.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

²In light of this disposition, we deny appellant's motion for request of briefing schedule and fast track statement as moot.

cc: Hon. Kathleen E. Delaney, District Judge
Ricardo A. Irive
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk