

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROME RICHARD CHACON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 33939

ROME RICHARD CHACON,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE KATHY A. HARDCASTLE,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

No. 36158

FILED

AUG 16 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR

WRIT OF MANDAMUS AND ORDER OF REMAND

Docket No. 33939 is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Docket No. 36158 is a proper person petition for a writ of mandamus seeking an order directing the district court to consider and resolve a post-conviction petition for a writ of habeas corpus which has been pending in the district court since 1995. On June 16, 2000, we consolidated these cases for disposition. See NRAP 3(b).

Petitioner was convicted pursuant to a jury verdict in 1992. He pursued a direct appeal, and filed a timely proper person post-conviction petition for a writ of habeas corpus on January 26, 1995. The State opposed the petition. The district court directed that counsel be appointed, and counsel finally confirmed on March 9, 1995. However, at a hearing on April 27, 1995, at which counsel sought a continuance, the district court took the matter off calendar indefinitely.

Nothing further happened in the case until August 1997, when petitioner moved to dismiss counsel, presumably for failure to prosecute the case. The district court granted the motion on August 18, 1997, and on November 24, 1997, granted petitioner leave to proceed in forma pauperis. On November 30, 1998, the district court denied petitioner's motion for appointment of counsel. On February 2, 1999, petitioner filed a photocopy of his 1995 habeas petition "to bring to the attention of the District Court that the Writ was not barred." The district court treated this filing as a second petition for post-conviction relief. The State opposed the petition on the ground that it was untimely filed, and on February 22, 1999, the district court denied the petition pursuant to NRS 34.726 (a petition that challenges the judgment of conviction must be filed within 1 year of the issuance of the remittitur in the direct appeal) and NRS 34.800 (a period of five years between the entry of judgment and the filing of a petition that challenges that judgment creates a rebuttable presumption of prejudice to the State). Docket No. 33939 is petitioner's appeal from that order.

It appeared from our review of the record in Docket No. 33939 and the documents on file with this court in Docket No. 36158 that the original petition, filed January 26, 1995, has never been considered or resolved. The original petition was timely filed, and petitioner is entitled to have it considered on the merits. Accordingly, it appeared that petitioner had set forth issues of arguable merit and that he had no adequate remedy at law. See NRS 34.160. On June 16, 2000, we therefore ordered the State, on behalf of the respondent, to respond and show cause why this court should not issue a writ of mandamus directing the district court to consider and resolve, on its merits, the petition filed January 26, 1995, and reverse the district court's order of February 22, 1999, and remand the matter for reconsideration after the district court resolves the original January 26, 1995, petition.


The State has responded to our order and concedes that petitioner is entitled to have his 1995 petition reviewed by the district court. The State proposes, however, that this court

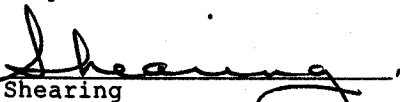
simply dismiss the appeal from the order denying the February 1999 petition (Docket No. 33939) on the ground that it is time-barred. See NRS 34.726.

Having considered the documents on file with this court, and the State's response to our order of June 16, 2000, we hereby grant the petition for a writ of mandamus. The clerk of this court shall issue a writ of mandamus in Docket No. 36158 directing the district court to consider and resolve, on its merits, the petition filed January 26, 1995.¹

In addition, we reverse the district court's order of February 22, 1999, and we remand the matter in Docket No. 33939 for reconsideration after the district court resolves the original January 26, 1995, petition.

It is so ORDERED.²


Maupin J.


Shearing J.


Becker J.

¹We note that in 1995, when petitioner filed his original petition, the district court concluded that counsel should be appointed to assist petitioner in the post-conviction proceedings. However, in 1998, after petitioner had sought the removal of attorney Maglaras, the district court denied petitioner's renewed request for counsel. Given the severity of petitioner's offense (first-degree murder with use of a deadly weapon) and his sentence (two consecutive terms of life without the possibility of parole) it appears that an appointment of counsel may be warranted. The State proposes that petitioner's 1995 petition is well-drafted, and therefore counsel is not necessary. We suggest, however, that the record and petition may warrant review by counsel for evaluation of the issues raised and possible presentation of supplemental issues. See NRS 34.750. We therefore direct the district court to reconsider whether an appointment of counsel is warranted. See NRS 34.750.

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. This order constitutes this court's final disposition of these matters and is entered without prejudice to petitioner's right to timely appeal from any adverse decision of the district court on remand resolving petitioner's post-conviction petitions. Any further proceedings shall be docketed as a new and separate proceeding.

cc: Hon. Michael L. Douglas, District Judge
Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Rome Richard Chacon
Clark County Clerk