

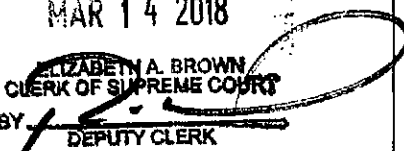
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAFRETO DEMETRIUS COLLINS,
A/K/A LAFRETO DEMETRIUS
GOLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73254

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY:  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Lafreto Demetrius Collins appeals from an order of the district court denying his February 3, 2017, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Collins contends the district court erred by denying his claim that trial counsel was ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. To warrant an evidentiary hearing on his petition, a petitioner must raise claims supported by specific factual

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

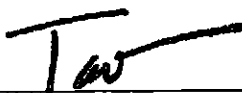
Collins claimed counsel advised him to reject the State's guilty plea offer because counsel believed the prosecutor would not be able to convict Collins at trial. The district court found Collins' claim was belied by the record because two guilty-plea offers had been made to Collins, Collins stated he did not want to enter into either agreement, and counsel stated Collins had created a scene in rejecting offers at previous proceedings. While all of these facts are supported by the record, none of them belie Collins' claim that counsel advised him to reject the State's guilty plea offer. *See Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (deferring to the district court's factual findings that are supported by substantial evidence and not clearly wrong). Further, there appears to have been substantial evidence of Collins' guilt such that, if counsel gave the advice Collins claimed, counsel would have been objectively unreasonable. *See Lafler v. Cooper*, 566 U.S. 156, 163, 132 S. Ct. 1376, 1384 (2012). Because Collins' claims were not belied by the record and, if true, would have entitled him to relief, we conclude the district court erred by denying Collins' petition without first conducting an evidentiary hearing.


Collins also requested the appointment of postconviction counsel to assist him in developing his claims. The district court denied Collins' request solely on the ground that it summarily denied his petition. As this was Collins' first, timely petition, summary dismissal would not have been appropriate. *See Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 761 (2017) (holding a "first petition challenging the validity of [a petitioner's] judgment of conviction and sentence" "was not subject to summary dismissal"). The district court's order was silent as to the relevant factors listed in NRS 34.750(1), suggesting it did not consider them.

Collins faces a maximum of 21 years in prison. While the single issue he raised below is not necessarily difficult, Collins was convicted after a four-day jury trial. And the record indicates Collins may not be able to comprehend the proceedings. Specifically, Collins has an IQ of 52, and he was transferred early in the case to competency court because counsel had concerns about his "intellectual disability." Collins was found competent after a stay at Lake's Crossing, but his petition indicates it was written by another inmate because of Collins' "diminished capacity" and "below average intelligence." In light of the unique facts in Collins' case, we conclude the district court abused its discretion by failing to appoint postconviction counsel. 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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²To the extent Collins raises new claims in his informal brief, we decline to consider them on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. William D. Kephart, District Judge
Lafreto Demetrius Collins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk