

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVANS CARTER TUTT, III, A/K/A
EVANS CARTER TUTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74944-COA

FILED

NOV 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Evans Carter Tutt, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 4, 2017.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

The district court denied the timely filed petition without appointing counsel. We conclude the district court erred in denying the petition without appointing counsel for the reasons discussed below.


NRS 34.750(1) provides for the discretionary appointment of postconviction 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. The determination of whether counsel should be appointed is not necessarily dependent upon whether a petitioner raises issues in a

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

petition which, if true, would entitle the petitioner to relief. *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 762 (2017)

Tutt's petition arose out of a trial with potentially complex issues. Tutt was represented by appointed counsel at trial and Tutt is serving a significant sentence. In addition, Tutt moved for the appointment of counsel and claimed that he was indigent. The failure to appoint postconviction counsel prevented a meaningful litigation of the petition. Thus, we reverse the district court's denial of Tutt's petition and remand this matter for the appointment of counsel to assist Tutt in the postconviction 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.


_____, C.J.
Silver


_____, J.
Gibbons

TAO, J., dissenting:

I respectfully dissent. In his petition below, Tutt alleged his Sixth and Fourteenth Amendment rights were violated because of ineffective assistance of trial and appellate counsel and he was denied a fair trial. But Tutt failed to support any of these claims with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-

03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err by denying the petition without first holding an evidentiary hearing, *see id.*, or appointing counsel, *see* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017). Accordingly, I would affirm the district court's denial of the petition.

Tao

_____, J.
Tao

cc: Hon. Douglas Smith, District Judge
Evans Carter Tutt, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk