

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC EUGENE BOONE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36994

FILED

AUG 22 2002

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant claimed, among other things, that his counsel, who represented him in the proceedings leading to his conviction, provided ineffective assistance of counsel. The district court conducted a hearing on the merits of the claims appellant raised in his petition. At the hearing, the district court received evidence and testimony from appellant's former counsel regarding the merits of the claims appellants raised in his petition. Appellant, however, was not present at the hearing nor was post-conviction counsel appointed to represent appellant at the hearing. After the hearing, the district court denied appellant's petition. This appeal followed.

This court recently held in Gebers v. State<sup>1</sup> that a petitioner's statutory rights are violated when a district court conducts evidentiary hearings regarding the merits of the claims raised in a petitioner's petition when the petitioner is not present at the hearing nor represented by post-


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<sup>1</sup>See Gebers v. State, 118 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 53, August 2, 2002).

conviction counsel. Thus, pursuant to Gebers, the district court violated appellant's statutory rights when it conducted an ex parte evidentiary hearing on the claims appellant raised in his petition. Therefore, we reverse the order of the district court denying appellant's petition and remand this matter to a different district court judge for an evidentiary hearing on the merits of the claims appellant raised in his petition. The district court shall provide for appellant's presence at the hearing.<sup>2</sup>

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in these matters.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>4</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

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<sup>2</sup>See NRS 34.390. The district court may exercise its discretion to appoint post-conviction counsel. See NRS 34.750.

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>4</sup>This order constitutes our final decision of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. John S. McGroarty, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Eric Eugene Boone  
Clark County Clerk