

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMON AGUSTIN MORGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76887-COA

FILED

SEP 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Ramon Agustin Morga appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 7, 2018, and supplemental petition filed on April 4, 2018. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Morga contends the district court erred by denying his motion to appoint postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. It also sets forth the following factors that the court may consider in making its determination to appoint counsel: the severity of the consequences to the petitioner, the difficulty of the issues presented, whether the petitioner is unable to comprehend the proceedings, and whether counsel is necessary to proceed with discovery.

Morga satisfied the threshold requirements to have his request for counsel considered. The district court implicitly found Morga was indigent when it granted his pro se motion to proceed in forma pauperis. And this is Morga's first, timely postconviction petition for a writ of habeas corpus. In its written order denying Morga's petition, the district court denied the appointment of postconviction counsel solely because Morga


“failed to raise a valid claim.” However, the Nevada Supreme Court has stressed “that the decision whether to appoint counsel under NRS 34.750(1) is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit or would warrant an evidentiary hearing.” *Renteria-Novoa v. State*, 133 Nev. 75, 77, 391 P.3d 760, 762 (2017). We therefore conclude the district court abused its discretion by relying on this basis to deny Morga the assistance of appointed counsel.

In a prior oral ruling, the district court denied Morga’s request for the appointment of counsel solely on the basis that “this is not a complicated issue.” It does not appear from the record that the district court considered any other factors. However, the NRS 34.750(1) factors overall weigh in favor of the appointment of counsel in this case. The consequences Morga faces are significant. He is serving a sentence of 10 to 25 years in prison, and because no appeal was filed, this proceeding may represent his sole opportunity to have a court review his conviction or postconviction claims. While the claims raised in Morga’s petition are not particularly complex, they are nuanced, and Morga made clear at the evidentiary hearing that he did not know how to ask the necessary questions. Additionally, the transcript reveals Morga did not understand the procedures and burdens at the proceeding. Morga’s ability to identify and plead additional claims was hindered by the lack of trial transcripts filed in his case. Further, the presence of an interpreter at the evidentiary hearing suggests Morga needed help in understanding the proceedings. Because the failure to appoint postconviction counsel prevented a meaningful litigation of the petition, we conclude the district court abused its discretion by denying Morga’s request for counsel. Thus, we reverse the district court’s denial of Morga’s petition and remand this matter for the appointment of

counsel to assist Morga in the postconviction proceedings, including the filing of a supplemental petition. *See* NRS 34.750(3). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Ramon Agustin Morga
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Morga's request that this court find good cause for him to file a successive petition is not ripe for review. Should Morga file a successive petition, he may raise at that time any arguments that he has good cause to overcome procedural bars. *See, e.g.*, NRS 34.726(1); 34.810(2), (3).