

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID JAMES BURNS, A/K/A D-SHOT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69959

**FILED**

FEB 17 2017

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

*ORDER OF REVERSAL AND REMAND*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

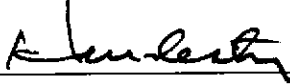
Appellant filed a timely petition on October 13, 2015. The district court declined to appoint counsel and denied the petition. We conclude that the district court abused its discretion in denying the petition without appointing counsel for the reasons discussed below.

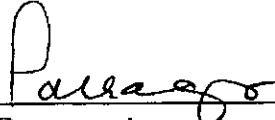
NRS 34.750 provides for the discretionary appointment of postconviction counsel and sets forth the following factors which the court may consider in exercising that discretion: the petitioner's indigency, the severity of the consequences to the petitioner, the difficulty of the issues presented, whether the petitioner is unable to comprehend the proceedings, and whether counsel is necessary to proceed with discovery. The decision is not necessarily dependent upon whether a petitioner has identified issues which, if true, would entitle the petitioner to relief.

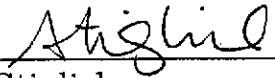
Appellant's petition challenges a judgment of conviction that was the result of a lengthy trial with potentially complex legal issues and factual issues that may require development outside the record. Appellant is indigent and was represented by appointed counsel at trial. Appellant

is serving a significant sentence. Considering the relevant factors and circumstances, the failure to appoint postconviction counsel prevented a meaningful litigation of the petition. 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>1</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Eric Johnson, District Judge  
David James Burns  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>We deny the motion for appointment of counsel on appeal and motion to proceed in forma pauperis on appeal as moot. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.