

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL T. ECHEVARRIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69726

FILED

DEC 28 2016

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

ORDER OF REVERSAL AND REMAND

Appellant Michael T. Echevarria appeals from a district court order denying his September 28, 2010, petition.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Echevarria argues the district court erred in denying his petition without conducting an evidentiary hearing. On appeal from a prior denial of this petition, this court reversed the district court's decision to deny the petition and remanded for the district court to conduct an evidentiary hearing regarding Echevarria's appeal-deprivation claim. *Echevarria v. State*, Docket No. 67387 (Order Affirming in Part, Reversing in Part, and Remanding, July 15, 2015).

Despite this court's order, the district court chose to again deny the petition without conducting an evidentiary hearing. The district court denied relief upon two bases: Echevarria's petition became moot when he was released from custody following the expiration of his

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

sentence and Echevarria's former counsel cannot be located, and therefore, an "evidentiary hearing would be meaningless because there are no relevant witnesses to call at that hearing." We conclude both of the district court's reasons for declining to conduct an evidentiary hearing were erroneous.

First, the district court erred in concluding Echevarria's petition became moot upon his release from custody. The Nevada Supreme Court has held that if a postconviction petition challenging a conviction was filed while the petitioner was in custody, the petition does not become moot upon the petitioner's subsequent release from custody if the petitioner faces collateral consequences stemming from the conviction. *Martinez-Hernandez v. State*, 132 Nev. ___, ___, 380 P.3d 861, 864 (2016). In addition, there is a presumption that a petitioner faces collateral consequences. *Id.* at ___, 380 P.3d at 684-85. As Echevarria filed his petition when he was incarcerated, his petition did not become moot upon his release from custody and there is a presumption he faces collateral consequences, the district court erred in summarily denying Echevarria's petition as moot. Accordingly, we reverse this decision and remand for consideration of Echevarria's appeal deprivation claim at an evidentiary hearing.

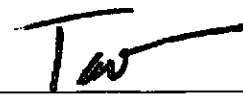
Second, the district court erred in concluding there were no relevant witnesses regarding Echevarria's appeal-deprivation claim. We note the district court reached this decision during a hearing without the presence of Echevarria's appointed counsel and by discussing the petition with Echevarria personally. We further note there was a relevant witness because Echevarria himself was available to provide testimony regarding his pursuit of an appeal, yet the district court chose not to hear

Echevarria's testimony. As this court stated in its prior order regarding this issue, Echevarria's assertion that his counsel was ineffective for failing to file an appeal from the order revoking his probation was a claim that, if true, would provide Echevarria relief and the district court erred by failing to conduct an evidentiary hearing on this issue. *Echevarria v. State*, Docket No. 67387 (Order Affirming in Part, Reversing in Part, and Remanding, July 15, 2015).

Therefore, we reverse the district court's order and remand for consideration of Echevarria's appeal-deprivation claim at an evidentiary hearing where the parties may present all relevant and available evidence regarding Echevarria's appeal-deprivation claim. 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.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Michael T. Echevarria
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk