

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YOANDY FERNANDEZ-MORALES,  
Appellant,  
vs.  
JERRY HOWELL, WARDEN; AND THE  
STATE OF NEVADA,  
Respondents.

No. 81725-COA

**FILED**

APR 28 2021

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

*ORDER OF REVERSAL AND REMAND*

Yoandy Fernandez-Morales appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 18, 2019. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Fernandez-Morales argues the district court erred by denying his postconviction petition for a writ of habeas corpus. Fernandez-Morales filed a timely postconviction petition for a writ of habeas corpus and filed a motion requesting the appointment of postconviction counsel. The district court denied the petition without appointing postconviction counsel to represent Fernandez-Morales. We conclude the district court erred 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 a non-exhaustive list of factors that 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 petition that, if true, would entitle the petitioner to relief. *See Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017). Moreover, in cases where a language barrier may have interfered with a petitioner's ability to comprehend the postconviction proceedings, "the petitioner may be unable to sufficiently present viable claims in his or her petition without the assistance of counsel." *See id.* at 77, 391 P.3d at 762.

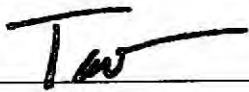
Fernandez-Morales moved for the appointment of counsel and claimed that he was indigent. The district court gave no reason for declining to appoint postconviction counsel. Fernandez-Morales is serving a significant sentence. Fernandez-Morales's contention that he has a language barrier is supported by the record before this court: He had the assistance of a Spanish-language interpreter during the trial-level proceedings, and his petition and his motion requesting the appointment of postconviction counsel were largely written in the Spanish language. In his informal brief, Fernandez-Morales contends that he only speaks Spanish and asserts the language barrier was the reason he wrote the petition in that language.

Based on the record before this court, in particular the portions of the record supporting Fernandez-Morales's assertion that he has a language barrier, the failure to appoint postconviction counsel prevented a meaningful litigation of the petition. Therefore, we conclude the district court abused its discretion by declining to appoint postconviction counsel. *See id.* at 78, 391 P.3d at 762 (finding the failure to appoint postconviction counsel was an abuse of discretion due to the severity of the consequences faced by the petitioner, the potential need for discovery, and the petitioner's

language barrier). Thus, we reverse the district court's denial of Fernandez-Morales's petition and remand this matter for the appointment of postconviction counsel to assist Fernandez-Morales 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.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David M. Jones, District Judge  
Yoandy Fernandez-Morales  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk