

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37685

FILED

SEP 09 2002

STEVEN SAMUEL BRAUNSTEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37761

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

ORDER OF AFFIRMANCE IN PART AND REVERSAL AND REMAND

IN PART

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus and appellant's motion to seal records. We elect to consolidate these appeals for disposition.¹

Appellant filed proper person post-conviction petitions for writs of habeas corpus in the district court.² In his petitions, appellant claimed, among other things, that his counsel, who represented him in the

¹See NRAP 3(b).

²Appellant filed a petition labeled petition for direct appeal in Docket No. 37761. Appellant filed a petition labeled petition for direct appeal, as well as a motion to seal records, in Docket No. 37685. Because appellant's petitions challenged his conviction and sentence, we conclude that the district court properly construed appellant's petitions as petitions for habeas corpus. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").

proceedings leading to his convictions, provided ineffective assistance. Appellant also filed a motion to seal records in the district court. In his motion, appellant claimed that the records of district court case number 100369 should be sealed because the charges were eventually dismissed.

The district court conducted hearings on the merits of the claims appellant raised in his petitions and motion. At the hearing, the district court received evidence and testimony from appellant's former counsel regarding the merits of the claims appellant raised in his petitions and motion. 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 petitions and motion.

This court recently held in Gebers v. State³ that a petitioner's statutory rights are violated when a district court conducts evidentiary hearings regarding the claims raised in a petition when the petitioner is not present at the hearing. Thus, pursuant to Gebers, we reverse the orders of the district court denying appellant's petitions and remand these matters to a different district court for an evidentiary hearing on the merits of the claims appellant raised in his petitions. The district court shall provide for appellant's presence at the hearing.⁴

To the extent that appellant sought to appeal the denial of the motion to seal records, we find that the district court did not err and affirm the denial of the motion. Appellant's proper remedy is to file a petition in compliance with NRS 179.225.

³See Gebers v. State, 118 Nev. ___, ___ P.3d ___ (Adv. Op. No. 53, August 2, 2002).


⁴See NRS 34.390. The district court may exercise its discretion and appoint post-conviction counsel. See NRS 34.750.

Having reviewed the records on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in these matters.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART and REVERSED IN PART and we REMAND these matters to the district court for further proceedings consistent with this order.

It is so ORDERED.⁶


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Steven Samuel Braunstein
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in these matters. We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of these appeals. Any subsequent appeal shall be docketed as a new matter.