

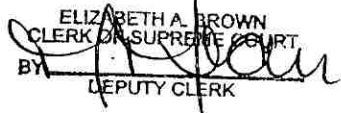
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH WILLIAM SULLIVAN,
Appellant,
vs.
PERRY RUSSELL, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 85109-COA

FILED

MAR 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Keith William Sullivan appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 10, 2021.¹ Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Sullivan claims the district court erred by denying his motion to appoint postconviction counsel because he met the requirements of NRS 34.750(1) for the appointment of counsel and his law library access was unconstitutionally denied to him based on closures of the libraries during COVID-19. The district court denied Sullivan's timely petition without conducting an evidentiary hearing or appointing counsel. We conclude the district court erred by 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 nonexhaustive list of factors that the

¹On January 4, 2023, this court ordered the State to respond to Sullivan's opening brief. The State responded on February 3, 2023. We have considered that response when deciding this case.

court may consider in making its determination to appoint counsel: 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 that, if true, would entitle the petitioner to relief, and we review the district court's decision for an abuse of discretion. *See Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017).

Because the district court granted Sullivan leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Sullivan met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. The district court denied the request for counsel on the ground that he only raised a single issue, the issue was not complex or difficult, and Sullivan demonstrated an understanding of the proceedings.

Sullivan's petition arose out of a trial with potentially complex issues. Sullivan was represented by appointed counsel at trial, and he is serving a significant sentence of 8 to 20 years in prison. In addition, Sullivan alleged he had difficulty accessing the law library during the COVID-19 lockdown procedures. We note the district court acknowledged this difficulty by allowing Sullivan extra time to respond to the State's motion to dismiss.² The failure to appoint postconviction counsel prevented

²On February 18, 2022, the district court entered an order giving Sullivan 90 days to file a supplemental opposition to the motion to dismiss, which would have been due on or about May 19, 2022. Sullivan filed his

a meaningful litigation of the petition. Thus, we reverse the district court's denial of Sullivan's petition and remand this matter for the appointment of counsel to assist Sullivan 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.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Keith William Sullivan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

supplemental opposition on April 18, 2022, but the district court did not consider it, instead inexplicitly treating a previously filed supplement to the postconviction petition as the opposition. We conclude the district court erred by failing to consider Sullivan's timely filed opposition.

³We have considered all documents filed or received in this matter. We conclude Sullivan is only entitled to the relief described herein.

This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.