

IN THE SUPREME COURT OF THE STATE OF NEVADA

ATRIS LONDELL MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37941

FILED

JUL 22 2002

ORDER OF REVERSAL AND REMAND

JANE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On September 8, 1999, the district court convicted appellant, pursuant to a jury verdict, of numerous offenses, including first degree murder with the use of a deadly weapon and second degree murder with the use of a deadly weapon. Appellant was sentenced to two consecutive terms of life in the Nevada State Prison without the possibility of parole for first degree murder with the use of a deadly weapon and to lesser sentences for the other offenses. This court dismissed appellant's direct appeal.¹

On January 8, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus and requested appointment of counsel in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 23, 2001, the district court denied appellant's petition. This appeal followed.

¹Moore v. State, Docket No. 34052 (Order Dismissing Appeal, July 10, 2000).

In his petition, appellant contended that he received ineffective assistance of trial and appellate counsel and stated that he was indigent, did not understand the law, and needed counsel appointed to help him complete his petition and file a supplemental petition. The record before this court does not reveal whether the district court exercised its discretion and made a specific determination based on the factors set forth in NRS 34.750² as to whether counsel should have been appointed to represent appellant in his post-conviction petition. The determination of whether counsel should be appointed is not dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief. Rather, NRS 34.750 provides that the district court may exercise its discretion to appoint counsel based on the severity of the consequences, the complexity of the issues, and appellant's ability to understand the proceedings. In the instant case, the district court may wish to consider the fact that appellant was sentenced to two consecutive terms of life without the possibility of parole, had a jury trial,

²NRS 34.750 reads in relevant part:

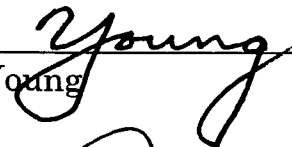
1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

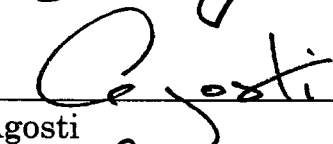
- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.


had no more than a twelfth grade education, and had claimed that he could not understand the proceedings. Additionally, the district court may also wish to consider factors such as the length of the trial and the age of the petitioner.

Accordingly, we reverse the order denying the petition and remand this matter to the district court for a reconsideration of whether the appointment of post-conviction counsel for appellant is warranted based on the factors provided in NRS 34.750.

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


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
Atris Londell Moore
Clark County Clerk

³We have considered all proper person documents filed or received in this matter. We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.