


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTIAN DOMINIQUE WILLIAMS
A/K/A KRISTEN DOMINIQUE
WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85376-COA

FILED
JUN 13 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Christian Dominique Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 8, 2017. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Williams argues that the district court erred by denying his petition without first conducting an evidentiary hearing. Williams contends that the district court erred because it decided a factual dispute based upon an affidavit filed during the postconviction proceedings.

To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Moreover, it is improper for a district court to resolve a factual dispute based upon review of affidavits filed during the postconviction proceedings without first conducting an evidentiary hearing regarding the relevant issues. *Mann v. State*, 118 Nev. 351, 355-56, 46 P.3d 1228, 1230-31 (2002).

In his petition, Williams claimed that his counsel was ineffective because counsel should have presented the testimony of Demarcus Clemens, a percipient witness to the shooting who would have testified Williams shot the victim in self-defense. This court has already reviewed this issue and concluded that the district court erred by denying this claim without first conducting an evidentiary hearing because Williams' allegations were not belied by the record and, if true, may have resulted in relief. *Williams v. State*, No. 75250-COA, 2019 WL 851444 (Nev. Ct. App. Feb. 13, 2019) (Order Affirming in Part, Reversing in Part and Remanding). This court explained that the district court erred by denying the petition without conducting an evidentiary hearing because the record contained insufficient information as to the true identity of Demarcus Clemens and because the district court's finding that Demarcus Clemens actually referred to a person named either Marcus Collins or Marquis Clemens was not supported by the record. *Id.* This court also concluded that the district court erred by finding that there was overwhelming evidence of Williams' guilt presented at trial because its finding relied upon a witness who had since recanted his testimony. *Id.*

Following this court's decision, the district court appointed postconviction counsel to represent Williams. Counsel filed a supplemental petition and included with the petition an affidavit from a person named Marquis Clemens. In the affidavit, Clemens states that he was at the courthouse during the trial, counsel informed him that he would not be called to testify, and counsel did not explain why he would not be called to testify. Clemens also states in the affidavit that the victim fired the initial shot during the relevant incident.

The district court reviewed the affidavit and utilized the information contained within the affidavit to decide that Williams' ineffective-assistance-of-counsel claim concerning counsel's failure to call Demarcus Clemons to testify at trial lacked merit. The district court stated that the only factual issue to be decided was whether Demarcus Clemons, Marcus Collins, and Marquis Clemons were in fact the same person. And the district court found that all of those names referred to the same person. The district court also found that the information contained within the affidavit demonstrated that the decision not to call that person to testify was a strategic decision.

The district court's decision to deny Williams' claim based upon information contained within the affidavit was erroneous. As this court has already explained, Williams' claim contained the sort of factual dispute that should have been resolved at an evidentiary hearing. In addition, Williams' ineffective-assistance-of-counsel claim encompassed more factual issues than simply the actual name of the relevant witness. Rather, the claim implicated trial counsel's decision as to whether to present the relevant witness's testimony at trial and whether any error in failing to call that witness to testify at trial prejudiced Williams. Moreover, the affidavit contained no information regarding the reasons counsel had for not calling any particular witnesses to testify at trial, and thus the district court's finding that counsel made a strategic decision not to call the relevant witness was not supported by the record.

As this court has already stated, Williams' claim was supported by specific factual allegations that were not repelled by the record and, if true, would entitle Williams to relief. Thus, the district court erred by

denying Williams' claim without first conducting an evidentiary hearing. 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.
Bulla


_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
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Eighth District Court Clerk