

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

No. 37444

AUG 22 2002

THOMAS M. BLONQUIST,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

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

No. 37679

WILLIAM E. FERGUSON,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No. 37939

GEORGE W. LUSTER, JR.,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No. 38013

JOHN M. HAWKINS,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

ORDER OF REVERSAL AND REMAND

Docket Nos. 37444, 37679, 37939, and 38013 are proper person appeals from orders of the district court denying appellants' post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup>

Appellants filed proper person post-conviction petitions for writs of habeas corpus in the district court. In their petitions, appellants claimed, among other things, that their attorneys, who represented them

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<sup>1</sup>See NRAP 3(b).

in the proceedings leading to their convictions, provided ineffective assistance of counsel. The district court requested that appellants' former attorneys submit written responses to the district court regarding the claims appellants raised in their petitions.<sup>2</sup> The district court then conducted hearings on the merits of the claims appellants raised in their petitions. At the hearings, the district court received evidence and testimony from appellants' former counsel regarding the merits of the claims appellants raised in their petitions. Appellants, however, were not present at the hearings nor was post-conviction counsel appointed to represent appellants at the hearings. After each hearing, the district court denied appellants' petitions. These appeals followed.

This court recently held in Gebers v. State<sup>3</sup> that a petitioner's statutory rights are violated when a district court conducts evidentiary hearings regarding the merits of the claims raised in a petitioner's petition when the petitioner is not present at the hearings nor represented by post-conviction counsel. This court also recently held in Mann v. State<sup>4</sup> that a petitioner's statutory rights are violated when the district court improperly expands the record. Thus, pursuant to Gebers and Mann, the district court violated appellants' statutory rights when it conducted ex parte evidentiary hearings on the claims that appellants raised in their petitions and when it improperly expanded the record by requesting that appellants' former attorneys submit written responses to the claims raised

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<sup>2</sup>We note that these written responses are not contained in the records on appeal.

<sup>3</sup>See Gebers v. State, 118 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 53, August 2, 2002).

<sup>4</sup>See Mann v. State, 118 Nev. \_\_\_, 46 P.3d 1228 (2002).

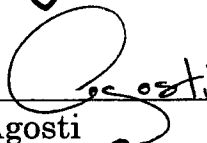
in appellants' petitions. Therefore, we reverse the orders of the district court denying appellants' petitions and remand these matters to a different district court judge for evidentiary hearings on the merits of the claims appellants raised in their petitions. The district court shall provide for appellants' presence at the hearings.<sup>5</sup>

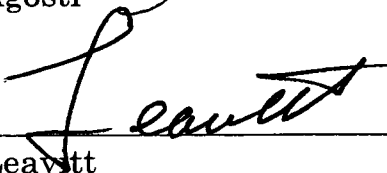
Having reviewed the records on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in these matters.<sup>6</sup> Accordingly, we

ORDER the judgments of the district court REVERSED AND REMAND these matters to the district court for proceedings consistent with this order.

It is so ORDERED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

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<sup>5</sup>See NRS 34.390. The district court may exercise its discretion to appoint post-conviction counsel. See NRS 34.750.

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have considered all proper person documents filed or received in these matters. We conclude that appellants are 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 number.

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Thomas M. Blonquist  
William E. Ferguson  
George W. Luster, Jr.  
John M. Hawkins  
Clark County Clerk