

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORENZO TUCKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38038

FILED

JAN 15 2003

ORDER OF REVERSAL AND REMAND

JANETTE F. ZLOCA,
CLERK OF SUPREME COURT
BY *J. Richards*
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 December 27, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant claimed that his attorneys, who represented him in the proceedings leading to his conviction, provided ineffective assistance of counsel. The district court requested that appellant's former attorneys submit responses to the district court regarding the claims that appellant raised in his petition.¹ The district court then conducted a hearing on the claims that appellant raised in his petition. At the hearing, the district court received evidence and testimony from one of appellant's former

¹We note that the responses are not contained in the record on appeal and it does not appear that appellant was served with copies of the responses.

attorneys. Appellant, however, was not present at the hearing. After the hearing, the district court denied appellant's petition. This appeal followed.

This court recently held in Gebers v. State² that a petitioner's statutory rights are violated when a district court conducts an evidentiary hearing regarding the merits of the claims raised in a petitioner's petition when the petitioner is not present at the hearing. This court also recently held in Mann v. State³ 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 appellant's statutory rights when it conducted an ex parte evidentiary hearing and when it improperly expanded the record by requesting that appellant's former attorneys submit responses addressing the merits of the claims that appellant raised in his petition. Therefore, we reverse the order of the district court denying appellant's petition and remand this matter to a different district court judge for an evidentiary hearing on the merits of the claims appellant raised in his petition. The district court shall provide for appellant's presence at the hearings.⁴


²Gebers v. State, 118 Nev. ___, 50 P.3d 1092 (2002).

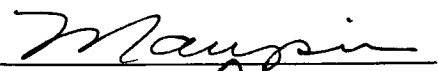
³Mann v. State, 118 Nev. ___, 46 P.3d 1228 (2002).

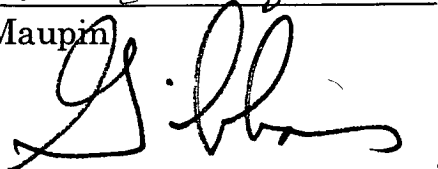
⁴See NRS 34.390. The district court may exercise its discretion to appoint post-conviction counsel. See NRS 34.750.

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

ORDER the judgment of the district court REVERSED AND REMAND these matters to the district court for proceedings consistent with this order.⁶


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Lorenzo Tucker
Clark County Clerk

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

⁶This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new number.