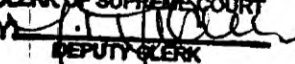


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HECTOR CARRILLO, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87728-COA

FILED  
JUL 30 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Hector Carrillo, Jr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 26, 2023. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Carrillo argues the district court erred by denying his claim of ineffective assistance of counsel as procedurally barred. In his petition, Carrillo claimed counsel was ineffective for “waiv[ing] a jury trial or fail[ing] to demand a jury trial.”<sup>1</sup> The district court appears to have denied this claim as procedurally barred pursuant to NRS 34.810(1)(b).<sup>2</sup> However, the

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<sup>1</sup>To the extent Carrillo also contended in his petition that the trial court erred by failing to hold a jury trial as an independent ground for relief, Carrillo explicitly distinguishes his claim of ineffective assistance of counsel from a claim of trial court error on appeal and does not argue that the district court erred by denying as procedurally barred any claim of trial court error.

<sup>2</sup>NRS 34.810(1)(b) requires a district court to dismiss a petition if the petitioner’s conviction was the result of a trial and the grounds for the petition could have been (1) presented to the trial court, (2) raised on direct appeal or in a prior postconviction habeas petition, or (3) raised in any other

Nevada Supreme Court has recognized that “[i]neffective assistance of counsel claims are properly raised for the first time in a timely first post-conviction petition.” *Pellegrini v. State*, 117 Nev. 860, 882, 34 P.3d 519, 534 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Therefore, we conclude the district court erred by denying Carrillo’s claim as procedurally barred.<sup>3</sup>

Moreover, to the extent the district court addressed the merits of this claim, the district court stated that counsel may have advised Carrillo to forgo a jury trial because there was a major backlog of domestic battery cases in justice court and that a decision to forgo a jury trial in such circumstances would have been reasonable. However, the district court did not hold an evidentiary hearing, and the record does not contain any information regarding whether counsel discussed the right to a jury trial with Carrillo, let alone advised Carrillo to forgo this right. Carrillo had a right to a jury trial, *see Andersen v. Eighth Jud. Dist. Ct.*, 135 Nev. 321, 321, 448 P.3d 1120, 1122 (2019), and Carrillo’s claim that counsel improperly waived his right to a jury trial or failed to demand a jury trial is not belied by the record.

In light of these circumstances, the district court erred by denying this claim without conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (determining an evidentiary hearing is required where a petitioner raises


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proceeding that the petitioner has taken to secure relief from their judgment of conviction or sentence.

<sup>3</sup>Because we conclude Carrillo’s claim was not procedurally barred, we need not consider whether trial counsel’s failure to file a direct appeal constitutes good cause to overcome the procedural bar.

claims supported by specific facts that are not belied by the record and that, if true, would entitle the petitioner to relief). Therefore, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim. 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. Michael Montero, District Judge  
Nevada State Public Defender's Office  
Humboldt County Public Defender  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk