



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEX P. YANKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89566-COA

*ORDER OF REVERSAL AND REMAND*

Alex P. Yanko appeals from a district court order denying a postconviction petition for a writ of habeas corpus and “memorandum of law in addendum to support writ of habeas corpus for ineffective assistance of counsel” filed on July 25, 2024. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Yanko claims the district court erred by denying his petition without having appointed postconviction counsel. NRS 34.750 provides for the discretionary appointment of postconviction counsel and sets forth a nonexhaustive list of factors that the court may consider in making its determination to appoint counsel: the severity of the consequences to the petitioner, the difficulty of those issues presented, whether the petitioner is unable to comprehend the proceedings, and whether counsel is necessary to proceed with discovery. NRS 34.750(1). The determination of whether counsel should be appointed is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief. *See Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017).

Yanko filed a pro se motion seeking the appointment of postconviction counsel in which he alleged that (1) he was indigent; (2) the “substantive issues and procedural matters” in the case were too complex for his comprehension; and (3) he could not conduct necessary discovery because he was incarcerated. In his motion, Yanko relied solely on federal statutes and cases pertaining to the appointment of postconviction counsel.

<sup>1</sup> In its order denying Yanko’s request, the district court noted that the appointment of postconviction counsel in this matter is governed by NRS 34.750 rather than federal law and concluded that, “if [Yanko] would like the Court to consider this request, [Yanko] needs to cite to applicable law and address the factors the Court is to consider when making this decision.” Yanko did not renew his request for appointment of counsel. Subsequently, in its order denying Yanko’s petition, the district court denied Yanko’s motion for the appointment of counsel without analysis.

Yanko filed a motion to proceed in forma pauperis and a supporting document alleging he is indigent, and he requested assistance of postconviction counsel on the instant petition, his first, timely postconviction habeas petition. Yanko therefore met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Nova*, 133 Nev. at 76, 391 P.3d at 760-61. Yanko’s petition arose out of a trial with potentially complex issues, and he is serving a sentence of life with the possibility of parole after 27 years. Moreover, as the district court found, Yanko’s petition contained bare claims without any underlying facts to support them, as well as claims that fell outside the scope of claims

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<sup>1</sup>Although Yanko relied solely on federal law in requesting the appointment of counsel, we note that some of his arguments related to the nonexhaustive list of factors provided for in NRS 34.750.

permitted under NRS 34.810. It thus appears that Yanko had difficulties comprehending the postconviction proceedings. Lastly, some of Yanko's claims require development of facts outside the record, including whether counsel was ineffective for not investigating potential witnesses. These factors favored granting Yanko's motion to appoint counsel in this case, and the failure to appoint post conviction counsel prevented a meaningful litigation of the petition. In light of the foregoing, we conclude the district court abused its discretion by denying Yanko's motion, and we reverse the district court's denial of Yanko's petition and remand this matter for the appointment of counsel to assist Yanko in the postconviction proceedings.<sup>2</sup> Accordingly, we

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



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Jacqueline M. Bluth, District Judge  
Law Office of Jean J. Schwartz, Ltd.  
Attorney General/Carson City

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<sup>2</sup>Yanko raised additional claims challenging the district court's denial of his petition. Given our resolution of this matter, we need not reach those claims.

Clark County District Attorney  
Eighth District Court Clerk