

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY L. DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39308

FILED

OCT 01 2002

ORDER OF REVERSAL AND REMAND

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

Appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant claimed, among other things, that his attorney, who represented him in the proceedings leading to his conviction, provided ineffective assistance of counsel. The district court requested that appellant's former attorney submit an affidavit to the district court regarding the claims that appellant raised in his petition.¹ The district court then conducted a hearing on the merits of the claims that appellant raised in his petition. At the hearing, the district court received evidence and testimony from appellant's former counsel regarding the merits of the claims appellant raised in his petition. Appellant, however, was not present at the hearing. After the hearing, the district court denied appellant's petition. This appeal followed.

¹We note that trial counsel's affidavit is not contained in the record on appeal.

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 on the claims that appellant raised in his petition and when it improperly expanded the record by requesting that appellant's former attorney submit an affidavit 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

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

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

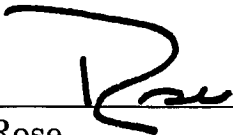
³See Mann v. State, 118 Nev. ___, 46 P.3d 1228 (2002).

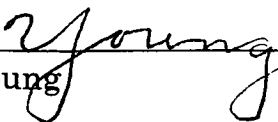
⁴See NRS 34.390. The district court may exercise its discretion to appoint post-conviction counsel. See NRS 34.750.

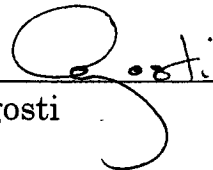
⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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

It is so ORDERED.⁶


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Anthony L. Daniels
Clark County Clerk

⁶We have considered all proper person documents filed or received in this matter. We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new number.