

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZEFERINO ELIZONDA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41555

FILED

SEP 20 2004

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Rubio*  
TRIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Zeferino Elizonda's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On January 24, 2003, the district court convicted Elizonda, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon (count I) and two counts of discharging a firearm into a structure (counts II and III). The district court sentenced Elizonda to serve two consecutive terms of 84 to 210 months in the Nevada State Prison for count I, and concurrent terms of 13 to 60 months for counts II and III. Elizonda did not file a direct appeal.

On March 11, 2003, Elizonda filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, Elizonda raised several claims of ineffective assistance of trial counsel.<sup>1</sup> The State opposed the petition. Although the petition was filed in proper person, Elizonda's trial counsel, James Buchanan, II, appeared

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<sup>1</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

before the district court on his behalf. The district court declined to conduct an evidentiary hearing and denied Elizonda's petition on May 29, 2003. This appeal followed.

Although we are cognizant of the fact that Elizonda is not entitled to the effective assistance of counsel in the instant post-conviction matter,<sup>2</sup> this court will not ignore the existence of a clear conflict of interest. Here, Elizonda raised multiple claims concerning the ineffectiveness of Mr. Buchanan, his trial counsel. Mr. Buchanan thereafter appeared in the district court, purportedly to represent Elizonda. An obvious conflict of interest exists when an attorney is forced to argue his own ineffectiveness at trial.<sup>3</sup> "That an attorney would have great incentives to prevent a client from prevailing in an ineffective assistance claim is both self-evident and well documented in the case law."<sup>4</sup> The district court should have dismissed Mr. Buchanan as counsel of record and either appointed Elizonda new counsel, or allowed Elizonda to proceed in proper person; permitting Mr. Buchanan to remain Elizonda's counsel in the instant post-conviction matter was wholly inappropriate.<sup>5</sup> Accordingly, we

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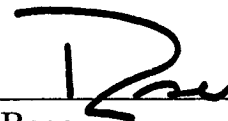
<sup>2</sup>See McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).


<sup>3</sup>We recommend that Mr. Buchanan review Supreme Court Rule 157(2), which provides in part, "[a] lawyer shall not represent a client if the representation of that client may be materially limited . . . by the lawyer's own interests."

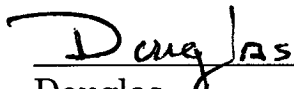
<sup>4</sup>Manning v. Foster, 224 F.3d 1129, 1134 (9th Cir. 2000).

<sup>5</sup>We further note that Mr. Buchanan incorrectly informed the district court that a direct appeal was pending in this court when no notice of appeal was ever filed.

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>6</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Valorie Vega, District Judge  
James L. Buchanan II  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk  
Zeferino Elizonda

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<sup>6</sup>We have reviewed all documents that Elizonda has submitted in proper person to the clerk of this court in this matter, and we conclude that he is entitled only to the relief described herein.