

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILES K.S. MANLEY A/K/A GILES
MANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44515

FILED

NOV 16 2005

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying appellant Giles K. S. Manley's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On May 27, 2003, the district court convicted Manley, pursuant to a guilty plea, of burglary, first-degree kidnapping with the use of a deadly weapon, three counts of robbery with the use of a deadly weapon, murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, three counts of attempted first-degree kidnapping with the use of a deadly weapon, murder, and possession of stolen property. The district court sentenced Manley to three consecutive terms of life in prison without the possibility of parole for the two murders. He was also sentenced to two consecutive life terms for first-degree kidnapping with parole eligibility after five years. Finally, the district court sentenced Manley to multiple prison terms for the remaining offenses. All the terms were ordered to run consecutively. This court

affirmed Manley's judgment of conviction.¹ The remittitur issued on June 29, 2004.

On September 29, 2004, Manley filed a proper person post-conviction petition for a writ of habeas corpus in the district court, followed by a supplement to his petition filed on November 8, 2004. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Manley or to conduct an evidentiary hearing. On December 13, 2004, the district court denied Manley's petition. This appeal followed.

In his appeal, Manley contends that the district court erred in not conducting an evidentiary hearing or appointing him post-conviction counsel. Manley is entitled to an evidentiary hearing if he "asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief."² A claim is belied by the record "when it is contradicted or proven to be false by the record as it existed at the time the claim was made."³ Here, Manley contended, among other claims, that he entered a guilty plea because he faced a possible death sentence and counsel advised him that he would be permitted to withdraw his plea

¹Manley v. State, Docket No. 41667 (Order of Affirmance, June 3, 2004).

²See Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002) (citing Hargrove v. State, 100 Nev. 498, 502-033, 686 P.2d 222, 225 (1984)).

³Id. at 354, 46 P.3d at 1230.

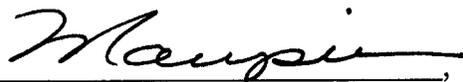
should the execution of juvenile offenders be later deemed unconstitutional. He further contends that when he discovered that this alleged advice was untrue, he sought unsuccessfully to withdraw his plea prior to sentencing. Based on the record before us, we conclude that Manley's claim is not belied by the record and therefore was entitled to an evidentiary hearing.

Further, NRS 34.750 provides for the discretionary appointment of counsel. In making its determination, the court may consider the severity of the consequences the petitioner faces, the complexity of the issues presented, the ability of the petitioner to comprehend the proceedings, and the necessity of counsel to proceed with discovery. Manley argues that counsel should have been appointed due to his age⁴ and his purported IQ of 78. We conclude that his age and limited intelligence call into question his ability to comprehend the proceedings and the issues presented in his petition. Additionally, as Manley received consecutive terms of life in prison without the possibility of parole for some of his crimes, the consequences he faces are unquestionably severe. Therefore, under the unique facts of this case, we conclude that appointment of post-conviction counsel is necessary.

Having concluded that this case must be remanded for an evidentiary hearing and the appointment of counsel, we decline to substantively address Manley's claims. Accordingly, we

⁴Manley was 16 years old at the time he committed his crimes in 2002.

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

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
JoNell Thomas
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk