

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE TIMOTHY SHELTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76762-COA

FILED

MAY 15 2019

ELIABETH A. BROWN
CLERK OF THE COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Bruce Timothy Shelton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Shelton filed a timely petition on February 8, 2018, and requested the appointment of postconviction counsel. The district court denied the petition without conducting an evidentiary hearing or appointing counsel. We conclude the district court erred by denying the petition without appointing counsel for the reasons discussed below.


NRS 34.750 provides for the discretionary appointment of postconviction counsel and sets forth a nonexhaustive list of factors which the court may consider in making its determination to appoint counsel: the petitioner's indigency, 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. The determination of whether counsel should be appointed

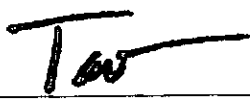
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief, and we review the district court's decision for an abuse of discretion. *See Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017).

Shelton's petition arose out of a trial with potentially complex issues. Shelton was represented by appointed counsel at trial, and he is serving a significant sentence. In addition, Shelton moved for the appointment of counsel and claimed that he was indigent. The failure to appoint postconviction counsel, coupled with the district court's earlier order denying Shelton's request for transcripts at the State's expense, prevented a meaningful litigation of the petition. Thus, we reverse the district court's denial of Shelton's petition and remand this matter for the appointment of counsel to assist Shelton in the postconviction proceedings. 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.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Bruce Timothy Shelton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk