

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH LAGUNA, A/K/A JOEY  
LAGUNA  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78866-COA

**FILED**

**MAY 11 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 78867-COA

JOSEPH LAGUNA, A/K/A JOEY  
LAGUNA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

*ORDER OF REVERSAL AND REMAND*

Joseph Laguna appeals from an order of the district court filed in district court case number C-15-303991-5 (Docket No. 78866-COA) and district court case number A-18-785267-W (Docket No. 78867-COA) denying a postconviction petition for a writ of habeas corpus filed on November 30, 2018. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Laguna filed his timely petition with a request for the appointment of postconviction counsel, arguing counsel was needed because he had been blinded while in jail and could not read. 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 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 is not necessarily dependent upon whether a petitioner raises issues in a petition that, 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).

Because the district court granted Laguna leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Laguna met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. The district court denied the request for counsel, concluding the issues Laguna raised were not difficult and there was no indication he could not comprehend the proceedings. However, the district court also held that Laguna failed to adequately plead prejudice for any claim, and the district court felt compelled to recharacterize some of Laguna's claims. This suggests that Laguna did not comprehend the proceedings. Laguna was convicted pursuant to a jury verdict. He was tried with two other codefendants in a trial with potentially complex issues that lasted more than three weeks. Laguna was represented by appointed counsel at trial, and he is serving a significant sentence. Finally, at least one of Laguna's claims—that counsel was ineffective for failing to call an alibi witness—required the assistance of counsel to proceed with discovery.

The failure to appoint postconviction counsel prevented a meaningful litigation of Laguna's petition. Thus, we reverse the district court's denial of Laguna's petition and remand this matter for the appointment of counsel to assist Laguna in the postconviction proceedings. Accordingly, we

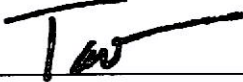
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for the appointment of postconviction counsel.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

TAO, J., concurring:

I concur. Laguna contends that he can no longer see and therefore cannot read. Based upon the existing record I have no idea if that assertion is true, but if it is, there is no meaningful way for him to pursue post-conviction relief except with the assistance of counsel, and thus at the very least the district court ought to have investigated this allegation further.

  
\_\_\_\_\_, J.  
Tao

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<sup>1</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Carolyn Ellsworth, District Judge  
Joseph Laguna  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk