

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABRIAL WILLIAMS,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN OF
ELY STATE PRISON; CHARLES
DANIELS, DIRECTOR OF THE
NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 81736-COA

FILED

MAY 07 2021

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

ORDER OF REVERSAL AND REMAND

Gabrial Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 29, 2020. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Williams claims the district court erred by denying his request for the appointment of postconviction counsel because he does not adequately understand the proceedings. The district court denied Williams' timely 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 that 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

is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief. *See Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017).

The district court denied Williams' request for counsel because it found the issues were not complex, Williams appeared to understand the proceedings, and the issues did not require discovery outside the record. Williams' petition was not subject to summary dismissal, *see* NRS 34.745(1), (4), and he claimed he was indigent. Williams was convicted pursuant to a jury verdict, and he was sentenced to an aggregated term of 26 to 75 years in prison, which is a significant sentence. Williams was tried with a codefendant in a trial with complex issues, including whether the statute of limitations had run. Additionally, the district court denied Williams' request for postconviction counsel after it had also denied his pro se request for records and court case documents. Williams' ability to identify and plead additional claims was hindered by his lack of records and case documents. The failure to appoint postconviction counsel prevented a meaningful litigation of the petition. Thus, we reverse the district court's denial of Williams' petition and remand this matter for the appointment of counsel to assist Williams 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: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 3
Gabrial Williams
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk