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Renteria-Novoa (Guillermo) v. State, 133 Nev. Adv. Op. 11 (March 30, 2017)

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CRIMINAL LAW: PETITIONS FOR POSTCONVICTION RELIEF

Summary

The district court abused its discretion in declining to appoint postconviction counsel to appellant. Appointment of counsel under NRS § 34.750(1) is not necessarily dependent upon whether a pro se petitioner raised claims that have merit or warrant an evidentiary hearing. Language barriers may deprive appellants of a meaningful opportunity to present his or her claims, and should therefore be taken into consideration.

Background

A jury convicted appellant Guillermo Renteria-Novoa of 36 felony sexual offenses and sentenced him to life with the possibility of parole after 85 years. He timely filed his pro se postconviction for a writ of habeas corpus and appointment of counsel. The district court exercising its discretion under NRS § 34.750(1) declined to appoint postconviction counsel and denied the petition. The district court found that the requirements for appointment of postconviction counsel were not met. This appeal followed.

Discussion

The Court took this opportunity to address the factors under NRS § 34.750(1)² and whether the threshold requirements for appointment of postconviction counsel were met. The Court determined that in this case the requirements were met and the district court abused its discretion.

First, the petitioner was indigent. Second, the petition was not subject to summary dismissal. The Court disagreed with the district court's order which noted that appellant did not demonstrate that the issues were difficult, that he could not comprehend or that more discovery was needed. The Court found that the appellant did not know the laws or the process, had limited English-language proficiency, and used an interpreter throughout the trial. Further, appellant was facing severe consequences and the petition was his only opportunity to assert ineffective assistance of counsel.

The Court also rejected the district court's decision to quote *Peterson v. Warden*.³ The quoted language referred to statute that was repealed and therefore *Peterson* should not have had any influence on the district court's decision.

¹ By Briana Martinez.

² See NEV. REV. STAT. 34.750(1) (a district court has discretion to appoint counsel to represent a petitioner who has filed a postconviction petition for a writ of habeas corpus if (1) the petitioner is indigent and (2) the petition is not summarily dismissed.).

³ *Peterson v. Warden*, 87 Nev. 134, 483 P.2d 204 (1971).

The Court held that in cases such as this one where a language barrier may have interfered with the petitioner's ability to understand the proceedings, declining to appoint postconviction counsel may deprive the petitioner of a meaning opportunity to present his or her claims. Thus, the Court reversed and remanded.

Conclusion

A district court should take a petitioner's language barrier into account when considering whether to appoint postconviction counsel. The Court concluded that the district court abused its discretion, and reversed and remanded.