

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAINE ANTON CRAWLEY,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN, HIGH
DESERT STATE PRISON,
Respondent.

No. 83136-COA

FILED

FEB 03 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Daine Anton Crawley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Crawley contends the district court erred by denying postconviction relief. Crawley filed postconviction petitions for a writ of habeas corpus on June 4, 2020, June 12, 2020, and March 18, 2021. We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court first denied relief on the ground that Crawley did not challenge the validity of his guilty plea or raise claims of ineffective assistance of counsel and, accordingly, his claims were outside the scope permissible under NRS 34.810(1)(a). This finding is belied by the record. At least one of Crawley's grounds contains allegations that trial-level counsel was ineffective, and other grounds contain complaints about counsel's performance. Accordingly, we conclude the district court erred by denying Crawley's petition as outside the scope. *See Erickson v. Pardus*,

551 U.S. 89, 94 (2007) (“A document filed *pro se* is to be liberally construed.” (italics in original) (internal quotation marks omitted)).

The district court also denied relief on the ground that the final pleading was a fugitive document because “Carl Arnold, Esq., was confirmed as counsel on August 26, 2020.” Because the record is conflicting, we cannot conclude this finding is supported by substantial evidence in the record. The minutes of August 26, 2020, are contradictory. They indicate that “Mr. Bailey will accept the appointment today,” but they conclude with “COURT ORDERED, Carl Arnold APPOINTED as counsel.” Further, while the district court’s case summary that was transmitted to this court indicates Mr. Arnold represented Crawley in his postconviction proceedings below, the State argues in its response on appeal that “the district court appointed Roger Bailey, Esq., as post-conviction counsel.” The State also concedes that Mr. Bailey “did not ‘actually represent’ Crawley below,” as Mr. Bailey made no appearance beyond that on August 26, 2020. We note the same is true of Mr. Arnold with the exception that, unlike Mr. Bailey, Mr. Arnold was not present at the August 26, 2020, hearing. In light of these unique facts, we cannot conclude that the district court did not err by denying Crawley’s petition as a fugitive document.

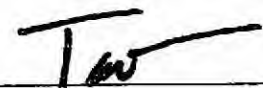
Finally, the district court implicitly found the appointment of counsel was warranted when it exercised its discretion and appointed postconviction counsel. The State does not oppose that decision on appeal. However, we note that at least one of Crawley’s claims in his petition was that counsel was ineffective in the sentencing proceedings. Because both Mr. Bailey and Mr. Arnold represented Crawley in one or more of the several hearings that comprised the sentencing proceedings, they appear to have a conflict of interest. *See Clark v. State*, 108 Nev. 324, 326, 831 P.2d

1374, 1376 (1992) ("In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." (quotation marks omitted)). Accordingly, we conclude the district court abused its discretion by appointing one or both of those attorneys as postconviction counsel.

Because we cannot conclude the district court did not err by denying Crawley's petition, we reverse the district court's order and remand this matter to the district court to reconsider Crawley's pleadings. We further instruct the district court to appoint replacement postconviction counsel who did not represent Crawley either in the trial-level proceedings or on appeal. For the foregoing reasons, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


Gibbons, C.J.


Tao, J.


Bulla, J.

¹The State argues on appeal that the district court denied the June 4, 2020, and June 12, 2020, pleadings as outside the scope permissible when the conviction arises out of a guilty plea. However, in both the minutes and its written order, the district court referred only to the March 18, 2021, pleading, which purported to supersede the previous pleadings. We urge the district court to be explicit as to the disposition of all pleadings, regardless of whether they are considered on the merits. See NRS 34.750(3), (5).

In light of the disposition, respondent's motion to transmit Crawley's presentence investigation report is denied.

cc: Hon. Jacqueline M. Bluth, District Judge
Daine Anton Crawley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk