

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD E. DONOVAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34725

FILED

OCT 19 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Subase*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On May 24, 1996, appellant was convicted, pursuant to a jury verdict, of four counts of burglary and was sentenced to serve four consecutive ten-year terms in prison. This court dismissed appellant's direct appeal. *Donovan v. State*, Docket No. 28790 (Order Dismissing Appeal, January 14, 1999). Appellant then filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplement to the petition. Pursuant to NRS 34.770, the district court declined to hold an evidentiary hearing and dismissed the petition, concluding that the petition failed to "articulate a basis in law" to support appellant's claims of ineffective assistance of counsel and that appellant's claims lacked merit. Appellant filed a timely appeal.

Appellant contends that the district court erred by dismissing the petition without conducting an evidentiary hearing. The state has filed a confession of error, stating that the petition complied with the pleading requirements stated in *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984), and that the petition raised various disputed facts of

constitutional dimension warranting an evidentiary hearing. Under the circumstances, we agree with the parties and remand this case for an evidentiary hearing on the claims raised in appellant's petition.¹

It is so ORDERED.²

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

¹We express no opinion as to the substantive merits of appellant's claims. See Drake v. State, 108 Nev. 523, 525, 836 P.2d 52, 53 (1992).

²Appellant suggests that the state of the record makes it clear that appellant's confession was involuntary and that, in the interests of justice, this court should suppress the confession, vacate the judgment of conviction, and remand for a new trial. We conclude that the record before this court is not sufficient to permit such action.