


IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD SPIVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53342

FILED


FEB 03 2010

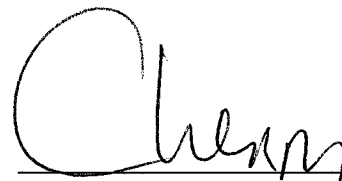
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CLERK OF SUPREME COURT
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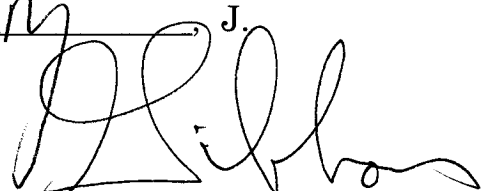
ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Respondent concedes that the district court erred in dismissing the petition under DCR 13 based solely on appellant's failure to oppose respondent's motion to dismiss the petition. See Beets v. State, 110 Nev. 339, 871 P.2d 357 (1994) (explaining that civil or criminal rules do not apply in post-conviction habeas proceedings when the matter is addressed in Chapter 34 and that summary judgment motion is not available in habeas). We agree with respondent and therefore

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


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We express no opinion as to the merits of respondent's motion to
dismiss, in particular whether appellant is entitled to an evidentiary
hearing or whether his claims are belied by the record or his allegations,
even if true, would not warrant relief.