

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ILANDERS STREET,  
Appellant,  
vs.  
E.K. MCDANIEL, WARDEN,  
Respondent.

No. 55975

**FILED**

JUL 29 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court dismissing appellant Christopher Street's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

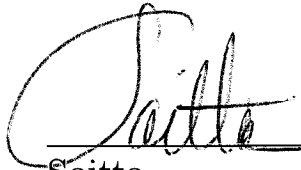
Street pleaded guilty to possessing stolen property and was sentenced as a habitual criminal. Street filed a timely post-conviction petition and a supplemental petition. The State moved to dismiss the petition on a number of grounds, including that various claims were not sufficiently pleaded, were belied by the record, or would not entitle Street to relief even assuming the truth of the allegations in the petition; Street filed no opposition. In a summary order, the district court noted the lack of opposition and "accordingly" granted the State's motion to dismiss.

It appears from the district court's order that Street's petition was dismissed solely because he failed to file a response to the State's motion to dismiss. The State cites King v. Cartlidge, 121 Nev. 926, 124 P.3d 1161 (2005), and DCR 13 for the proposition that a habeas petition can be dismissed based solely on the petitioner's failure to oppose a motion to dismiss. We conclude that a dismissal under DCR 13 is not available in

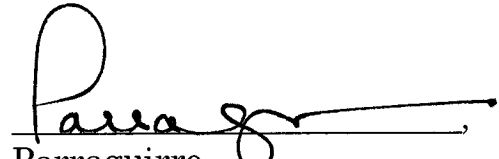
a post-conviction habeas proceeding. See NRS 34.34.780(1); Beets v. State, 110 Nev. 339, 341, 871 P.2d 357, 358 (1994). In particular, such a dismissal is inconsistent with NRS 34.830(1), which provides that “[a]ny order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the court.” We therefore conclude that the district court erred in dismissing Street’s petition based solely upon his failure to file an opposition to the State’s motion to dismiss.

Accordingly, we

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

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Brent T. Adams, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>1</sup>We express no opinion as to the merits of Street’s petition or the State’s dismissal motion.