

IN THE SUPREME COURT OF THE STATE OF NEVADA

ART SILVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58818

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Angela
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND


This is an appeal from an order of the district court summarily dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant asserts that the district court abused its discretion by failing to conduct an evidentiary hearing and by summarily dismissing his petition. The State has filed a confession of error in which it advises this court that it "believes the district court erred in dismissing the petition." The State informs this court that it did not file a responsive pleading to appellant's petition and the district court did not set forth specific findings of fact and conclusions of law in the order dismissing the petition. See NRS 34.830(1). The State further informs this court that it appears that appellant is entitled to an evidentiary hearing on at least one of his claims. See Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004). We conclude that the district court abused its discretion by failing to conduct an evidentiary hearing and by summarily dismissing appellant's petition. Therefore, we

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


_____, J.
Pickering


_____, Sr.J.
Rose


_____, Sr.J.
Shearing

cc: Hon. Patrick Flanagan, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.