

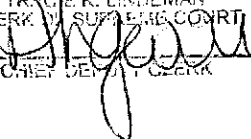
IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER BENITO-VICTORIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66667

FILED

NOV 24 2015

TRICIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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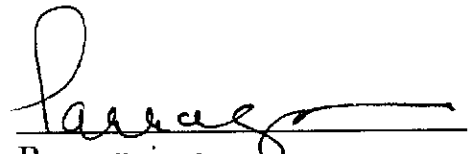
*ORDER OF REVERSAL AND REMAND*

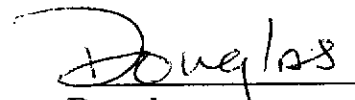
This is an appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

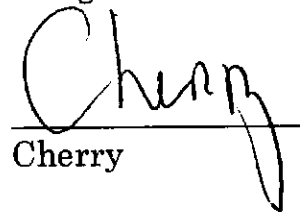
Appellant contends that the district court erred by denying his claim that trial counsel was ineffective for failing to present expert testimony regarding memory processes in children with respect to sexual abuse. The district court denied this claim without conducting an evidentiary hearing, reasoning that counsel was not deficient because he requested permission to have the victim undergo a psychological examination, and appellant was not prejudiced because the victim was vigorously cross-examined and was impeached by her brother and father. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). We conclude that the district court erred by denying this claim without conducting an evidentiary hearing. *See Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (giving deference to the district court's factual findings but reviewing its legal conclusions de novo); *Means v. State*, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (explaining that an evidentiary hearing is warranted if the petitioner presents facts which, if true, would entitle

him to relief). Although trial counsel requested that the victim undergo a psychological evaluation, counsel did not present expert testimony regarding a child's supposed inability to recall certain events before age five, particularly sexual events. Such testimony, if credible, could have impacted the verdict in a way that cross-examination or other impeachment could not, and therefore the district court was too quick to dismiss this claim without conducting an evidentiary hearing. We therefore

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

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

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Turco & Draskovich  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk