

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRY DODD JIM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39641

FILED

AUG 20 2002

ORDER OF REVERSAL AND REMAND

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

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

On November 14, 2000, Jim was convicted, pursuant to a nolo contendere plea,<sup>1</sup> of one count of attempted sexual assault. The district court sentenced Jim to serve a prison term of 72-180 months; he was given credit for 214 days time served. Jim's direct appeal from the judgment of conviction was denied by this court.<sup>2</sup>

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<sup>1</sup>Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

<sup>2</sup>Jim v. State, Docket No. 37136 (Order of Affirmance, November 16, 2001).

On December 21, 2001, Jim filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Jim, and a supplemental petition was filed on March 29, 2002. On April 24, 2002, without ordering the State to respond, and without conducting an evidentiary hearing, the district court denied Jim's petition. This timely appeal followed.

Jim contends the district court erred in denying his petition without conducting an evidentiary hearing. In its response, the State confesses error, concluding that Jim was entitled to an evidentiary hearing in the district court. We agree.

This court has stated that “[a] petitioner is entitled to a post-conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief.”<sup>3</sup> Moreover, when “something more than a naked allegation has been asserted, it is error to resolve the apparent factual dispute without granting the accused an evidentiary hearing.”<sup>4</sup> We conclude that Jim asserted sufficiently specific claims that were not belied by the record, and that the district court erred in not conducting an evidentiary hearing on those claims.

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<sup>3</sup>Mann v. State, 118 Nev. \_\_\_, \_\_\_, 46 P.3d 1228, 1229 (2002); see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

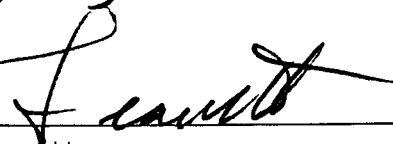
<sup>4</sup>Vaillancourt v. Warden, 90 Nev. 431, 432, 529 P.2d 204, 205 (1974).

Accordingly, we

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

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Steven R. Kosach, District Judge  
Hardy & Associates  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk