

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL JOSEPH DAVIS JR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12917
Trial Court No. 3AN-13-11157 CI

SUMMARY DISPOSITION

No. 0014 — April 3, 2019

Appeal from the District Court, Third Judicial District,
Anchorage, Brian Clark, Judge.

Appearances: Michael Horowitz, Law Office of Michael
Horowitz, Kingsley, Michigan, under contract with the Office
of Public Advocacy, Anchorage, for the Appellant. A. James
Klugman, Assistant District Attorney, Anchorage, and Jahna
Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court
Justice, and Andrews, Senior Superior Court Judge.*

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Michael Joseph Davis Jr., appeals the district court’s dismissal of his application for post-conviction relief after his attorney submitted a certificate of no merit.¹

Davis argues that the district court failed to follow the requirements of Alaska Criminal Rule 35.1(f)(2) before dismissing Davis’s application — specifically, the court should have independently assessed whether it appeared that Davis was not entitled to relief, should have issued an order explaining its own reasons for reaching that conclusion, and should have given Davis an opportunity to respond to that order.² The State concedes that the court failed to take these steps and that a remand is appropriate. We have independently reviewed the record and find the State’s concession to be well-founded.³

Davis also argues that the no-merit certificate filed by his attorney was deficient under Criminal Rule 35.1(e)(2) and (3) and our opinion in *Griffin v. State*.⁴ The State does not respond to this argument, but we agree with Davis that his attorney’s certificate was deficient. Most notably, a certificate of no merit “must provide the court with a full explanation of all the claims the attorney has considered and why the attorney has concluded that these claims are frivolous.”⁵ The certificate filed by Davis’s attorney, however, simply stated that he “was unable to discern any other colorable claims for relief.”

¹ See Alaska R. Crim. P. 35.1(e)(2) & (3).

² See Alaska R. Crim. P. 35.1(f)(2); see also *Lampley v. State*, 353 P.3d 844, 845 (Alaska App. 2015).

³ See *Boles v. State*, 210 P.3d 454, 455 (Alaska App. 2009).

⁴ *Griffin v. State*, 18 P.3d 71 (Alaska App. 2001).

⁵ *Griffin*, 18 P.3d at 77.

We therefore VACATE the judgment of the district court and REMAND for further proceedings. On remand, Davis's attorney should either file an amended application for post-conviction relief or a no-merit certificate that complies with Criminal Rule 35.1(e)(2) and (3) and *Griffin*. If Davis's attorney files a no-merit certificate, the court should then follow the procedures described in Criminal Rule 35.1(f)(2).⁶

⁶ See also *Lampley*, 353 P.3d at 845.