

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions 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

SHAWN ANTHONY JUSTICE,  
  
Appellant,  
  
v.  
  
STATE OF ALASKA,  
  
Appellee.

Court of Appeals No. A-13151  
Trial Court No. 4FA-16-01580 CI

SUMMARY DISPOSITION

No. 0101— January 2, 2020

Appeal from the Superior Court, Fourth Judicial District,  
Fairbanks, Michael P. McConahy, Judge.

Appearances: Megan M. Rowe, Denali Law Group, Anchorage,  
for the Appellant. Ann B. Black, Assistant Attorney General,  
Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson,  
Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior  
Judge.\*

Shawn Anthony Justice appeals the dismissal of his application for post-conviction relief.

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

In 2010, following a jury trial, Justice was convicted of eight counts of second-degree sexual abuse of a minor.<sup>1</sup> This Court affirmed Justice’s convictions on direct appeal.<sup>2</sup>

Justice then filed an application for post-conviction relief, alleging ineffective assistance of counsel by his trial attorneys. Justice’s trial and sentencing attorneys submitted affidavits in response to his allegations. The State moved to dismiss Justice’s application for failure to state a *prima facie* case of ineffective assistance of counsel, and Justice opposed the motion. The superior court subsequently dismissed Justice’s application for failure to state a *prima facie* case, stating only that the dismissal was “[b]ased on [the] State’s Motion to Dismiss.”

Justice moved for the court to produce written findings on its dismissal order pursuant to Alaska Civil Rule 52(a). The court denied this motion as procedurally defective under Alaska Civil Rule 77(b)(3), which requires an appropriate order for the court’s signature in the event that the motion is granted. But the court also explained, “To the extent the court considers the matter on the merits, it adopts and agrees with the factual assertions and legal authority set out in the defendant’s moving and responding pleadings.”

On appeal, Justice argues that, under Alaska Criminal Rule 35.1(g), the superior court was required to make specific findings of fact and to state expressly its conclusions of law. He asserts that the court’s failure to do so entitles him to a remand for further findings.

But as the State points out, Criminal Rule 35.1(g) applies when there has been a hearing on the merits. Here, the superior court dismissed the action on the

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<sup>1</sup> AS 11.41.436(a)(1).

<sup>2</sup> *See Justice v. State*, 2015 WL 996191 (Alaska App. Mar. 4, 2015) (unpublished).

pleadings, and no evidentiary hearing took place. Criminal Rule 35.1(f) governs the procedures that apply to summary dismissals on the pleadings. In short, when a court dismisses a post-conviction relief application on the pleadings, the applicant is entitled to notice of the reasons for that dismissal.<sup>3</sup> However, this obligation is satisfied when the court expressly orders dismissal for the reasons advanced by the State, and the applicant had a full and fair opportunity to respond to the State's motion (which Justice did).<sup>4</sup>

We note that Justice has not challenged the validity of the court's actions on any other grounds. In other words, he has not argued, as a substantive matter, that the superior court erred in dismissing his case for the reasons put forth by the State in its motion to dismiss. The only challenge Justice has raised is procedural. Because we find no error in the court's failure to provide additional analysis, we AFFIRM the judgment of the superior court.

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<sup>3</sup> *Inga v. State*, 2019 WL 211805, at \*2 (Alaska App. Jan. 16, 2019) (unpublished) (citing *Tall v. State*, 25 P.3d 704, 707 (Alaska App. 2001), *abrogated on other grounds by David v. State*, 372 P.3d 265 (Alaska App. 2016)).

<sup>4</sup> *Id.* (citing *Tall*, 25 P.3d at 707-08).