

§ 10-9.1-1(a)(5) (1997)). The key issue in the instant case is whether the Superior Court justice erred in summarily dismissing the petitioner's postconviction relief application without providing the petitioner an opportunity to reply to the proposed dismissal. This Court has previously "determined that § 10-9.1-6 does not require an evidentiary hearing, but that an applicant must be provided with an 'opportunity to reply to the court's proposed dismissal.'" Id. at 1017 (citing Corners v. State, 922 A.2d 176, 176 (R.I. 2007) (mem.)). Section 10-9.1-6(b) specifically states:

When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a genuine issue of material fact.

The State cites Ramirez v. State, 933 A.2d 1110 (R.I. 2007) to suggest that the case at bar is an exceptional case in which there is no need for a remand to provide the petitioner with an opportunity to respond to the proposed dismissal. Ramirez is distinguishable, however, because the application for postconviction relief in that case was clearly barred by the doctrine of res judicata. Therefore, this Court found it unnecessary to vacate and remand the case for a hearing on the proposed dismissal. The doctrine of res judicata is not applicable in the case at bar. Furthermore, despite its ruling in Ramirez, the Court cautioned the trial bench that generally it must "provide an applicant with a meaningful opportunity to respond to a proposed dismissal." Ramirez, 933 A.2d at 1112 n. 4.

In the case at bar, regardless of the merits of his application, the petitioner is entitled to an opportunity to respond to the proposed dismissal. Accordingly, we vacate the dismissal of the



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TITLE OF CASE: Stephen Mattatall v. State of Rhode Island

CASE NO SU-08-0083

COURT: Supreme Court

DATE OPINION FILED: February 26, 2009

JUSTICES: Goldberg, Acting C.J., Flaherty, Suttell, Robinson, JJ., and Williams, C.J. (ret.)

WRITTEN BY: Court Order – Not Applicable

SOURCE OF APPEAL: Superior Court, Providence County

JUDGE FROM LOWER COURT: Associate Justice Robert D. Krause

ATTORNEYS ON APPEAL: For Plaintiff: C. Daniel Schrock, Esq.

For Defendant: Christopher R. Bush, Esq.