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Woodley v. State Appellant's Reply Brief Dckt. 38195

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALEXANDER JASON WOODLEY,)
)
Petitioner-Appellant,)
) S. Ct. No. 38195-2010
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the Seventh
Judicial District of the State of Idaho
In and For the County of Bingham

HONORABLE DARREN B. SIMPSON
Presiding Judge

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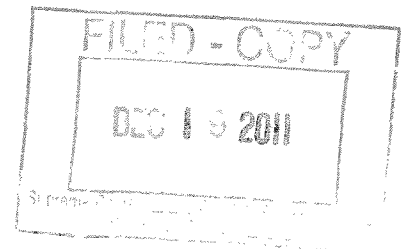


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II. ARGUMENT IN REPLY

A. **The District Court Erred in Dismissing Mr. Woodley’s Claims as Untimely Because He Presented an Issue of Fact as to Whether His Mental State Prevented Him From Timely Filing a Post-Conviction Petition**

The district court erred in failing to address Mr. Woodley’s claim that the time to file his post conviction petition should be equitably tolled as a result of his mental incapacity. Because Mr. Woodley presented an issue of fact as to whether his mental illness and medications prevented him from timely filing the post-conviction action, the district court’s error requires that this matter be remanded for an evidentiary hearing.

The state acknowledges that Mr. Woodley presented evidence that he suffered from depression for several years and that the depression has been sufficiently severe to lead to suicide attempts and hospitalizations. Respondent’s Brief, p. 10. The state further admits it can be inferred that Mr. Woodley was “incapable of acting on his post-conviction rights at or near the times of his hospitalizations.” *Id.* The state nonetheless claims that the district court’s dismissal of Mr. Woodley’s petition as untimely should be affirmed because this evidence does not show he was “incapacitated for the entire 16 months between the remittitur and the filing of the petition.” *Id.*

However, Mr. Woodley was not required to show that he was incapacitated for the entire sixteen months between the issuance of the remittitur on his direct appeal and the filing of the post-conviction petition. Further, it can be inferred from the evidence presented that Mr. Woodley was sufficiently incapacitated for the applicable time frame and, thus, his petition should not have been dismissed as untimely.

1. Pertinent period of incapacity

A sufficiently incapacitating mental illness can equitably *toll* the statute of limitations for post-conviction proceedings. *Sayas v. State*, 139 Idaho 957, 960, 88 P.3d 776, 779 (Ct. App. 2003). “‘Tolling’ refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting.” *Hooper v. Ebenezer Sr. Services and Rehabilitation Center*, 687 S.E.2d 29, 32 (S.C. 2009), *citing* 51 Am. Jur. 2d Limitation of Actions § 169 (2000).

Thus, Mr. Woodley defeated summary dismissal of his petition by establishing a factual issue as to whether incapacity arising from depression or the side effects of his medication stopped the one year clock from running for at least four months. In urging that Mr. Woodley was required to demonstrate sixteen months of incapacity, the state relies on an excerpt from *Schultz v. State*, 151 Idaho 383, 256 P.3d 791 (Ct. App. 2011) in which the Court of Appeals discussed our Supreme Court’s application of the discovery exception in *Evensiosky v. State*, 136 Idaho 189, 30 P.3d 967 (2001). In *Evensiosky*, the petitioner had discovered the facts giving rise to his ineffective assistance of counsel claim before the expiration of the statute of limitation. The Court held that because the petitioner had sufficient time thereafter to file a petition, there was no basis to apply a discovery exception. *Evensiosky*, 136 Idaho at 191, 30 P.3d at 969. Neither *Schultz* nor *Evensiosky* discussed equitable tolling based on mental illness. Instead, in *Schultz*, the Court concluded that equitable tolling did not apply because the petitioner did not diligently pursue his post-conviction rights.

The legislature determined that persons should have one year from the time a conviction becomes final to prepare a post-conviction petition – a length of time that contemplates that such

petitions are not counseled, investigated and drafted overnight. When incapacity renders a petitioner incapable of pursuing post-conviction rights for part of the limitation period, the limitation period stops, or is tolled, until capacity is regained. Therefore, Mr. Woodley was not required to show incapacity for the entire sixteen months the issuance of the remittitur on his direct appeal and the filing of the post-conviction petition.

2. Sufficient incapacity can be reasonably inferred from the record

Courts must liberally construe the facts and reasonable inferences in favor of the non-moving party – here, Mr. Woodley. *See Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010). As acknowledged by the state, the record demonstrates that Mr. Woodley was hospitalized on more than one occasion and it is reasonable to infer that Mr. Woodley was sufficiently ill during his hospitalizations and that he was incapable of acting on his post-conviction rights. It is further reasonable to infer that Mr. Woodley’s severe depression and treatment prevented him from exercising his post-conviction rights following his hospitalizations.

Mr. Woodley was hospitalized for suicidal ideation and self-mutilation the same month the remittitur was issued – November 2007 – and was again hospitalized at the Idaho Maximum Security Institute on April 23, 2008, after suffering from a breakdown during the period of retained jurisdiction. R. (38195) 36, 41, 43; State’s Exhibit A (38348). In May 2008, the prison staff opined that Mr. Woodley’s cognitive distortions and difficulty grasping and applying concepts warranted a second rider. R. (38195) 41-43. It is reasonable to infer from this record that Mr. Woodley’s depression incapacitated him not only during his hospitalizations but, also, throughout the periods in between and following.

Because post-conviction actions are tried to the judge rather than a jury, the judge in a post-conviction action is not constrained to draw inferences in favor of the party opposing the motion for summary disposition and can arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). Here, however, the district court made no such findings because it refused to toll the statute of limitations on an incorrect theory and this Court must construe all reasonable inferences in Mr. Woodley's favor. When the reasonable inferences are drawn in Mr. Woodley's favor, he has established an issue of fact as to whether his mental status was sufficiently incapacitating to toll the statute of limitations.

The state incorrectly asserts that the record demonstrates that Mr. Woodley "was not prescribed psychotropic medication, but an antidepressant." Respondent's Brief, p. 9. It is possible that the state is mistakenly equating psychotropic medication with anti-psychotics. However, the term psychotropic medication includes a wide variety of medications used to treat an array of mental illnesses and disorders and include antidepressants, anti-psychotics, mood stabilizers, anti-obsessive agents, anti-anxiety agents and anti-panic agents and stimulants. *See i.e.* National Alliance on Mental Illness (NAMI) table of Commonly Prescribed Psychotropic Medications, available online at http://www.nami.org/Template.cfm?Section=Policymakers_Toolkit&Template=/ContentManagement/HTMLDisplay.cfm&ContentID=18971.

The district court erred in denying Mr. Woodley's motion for equitable tolling on the basis that counsel was appointed to represent him in the underlying criminal proceedings during the relevant time period. Additionally, Mr. Woodley presented an issue of fact as to whether

mental illness and psychotropic medication prevented him from timely filing a post-conviction action. This Court should therefore reverse the district court's order denying equitable tolling and remand the case for further proceedings.

B. The District Court Erred in Summarily Dismissing Mr. Woodley's Claims as Untimely Because Counsel Had an Obligation to Advise Him That the Issues Raised in His Pro Se Motions Would Be Properly Raised in a Post-Conviction Petition and the State's Conduct Was Misleading

Mr. Woodley diligently pursued his ineffective assistance of counsel claims within the statute of limitations but incorrectly did so by filing his pro se motions instead of a document titled petition for post-conviction relief. Counsel appointed to represent Mr. Woodley in the criminal case actively assisted Mr. Woodley in pursuing his claims through the incorrect vehicle and, thus, counsel had an obligation to advise Mr. Woodley of his post-conviction rights. The state further misled Mr. Woodley by misinforming him regarding the statute of limitations. These circumstances deprived Mr. Woodley of a meaningful opportunity to pursue his post-conviction claims and the case should be remanded for further proceedings on the dismissed claims.

The state's only response to this argument is its incorrect assertion that the issue was not raised below. Respondent's Brief, p. 11-12. To the contrary, Mr. Woodley raised counsel's ineffective assistance in failing to timely file a post-conviction petition in response to the district court's finding that Mr. Woodley was not entitled to equitable tolling because he "was represented by able counsel who were charged with representing [his] legal interests" during the relevant time frame. R. (38195) 110, 132-136, 144.

Mr. Woodley argued "when the Court denied equitable tolling of the statute of limitation

... it wholly proved” that counsel was ineffective “because counsel failed to file a timely post-conviction petition.” R. (38195) 132. Mr. Woodley then outlined counsel’s performance and argued that if counsel had done “his homework he would have discovered that the Court’s breach could have only been brought through post-conviction petition.” *Id.* at 134. However, counsel “did not amend complaint to post-conviction relief, nor did he file a petition for post-conviction relief.” *Id.* at 135. Counsel “remained attorney of record before and after the expiration of the statute of limitation on post-conviction relief.” *Id.* at 135. “Counsel had sufficient time and evidence to prepare a successful post-conviction petition, however, he did not.” *Id.* at 136. “Ultimately, had counsel filed a timely post-conviction petition, [Mr. Woodley] would have been entitled to withdraw his plea and the outcome of this case would be different.” *Id.*

In his third amended petition for post-conviction relief, Mr. Woodley alleged that if he had received effective assistance of counsel, his petition for post-conviction relief would have been timely filed and the state would not be claiming the petition was untimely. R. (38195) 186. In response, the state argued that the attorney appointed in the criminal case was not appointed to represent him in post-conviction. Tr. p. 90, ln. 4 - p. 91, ln. 2. Mr. Woodley replied that counsel was required to investigate and take a look at “post-conviction procedures and the rights thereof.” *Id.* at p. 97, ln. 4-21.¹ Mr. Woodley also argued, as he did in his Appellant’s Brief in this appeal, that he was misled by the state’s argument against his motion to withdraw his guilty plea that the statute of limitation to file a post-conviction petition had already expired. Tr. p. 98, ln. 1-14; Appellant’s Brief, p. 10-11. In its order granting the state’s motion for summary dismissal in

¹ Mr. Woodley personally made these arguments on his behalf with the leave of the Court and counsel. Tr. p. 96, ln. 6-15.

part, the district court concluded that Mr. Woodley did not timely raise his allegation that counsel failed to timely file a post-conviction petition regarding the district court's breach of the Plea Agreement. *Id.* at 209.

Accordingly, Mr. Woodley argued to the district court that his post-conviction petition was not timely filed as a result of ineffective assistance of counsel. The district court erred in dismissing this claim as untimely rather than recognizing that counsel's ineffective assistance and the state's misleading conduct gave rise to exceptional circumstances excusing the statute of limitations. This case should therefore be remanded for further proceedings on the dismissed claims.

C. The District Court Erred in Summarily Dismissing Mr. Woodley's Claims as Untimely Because the Pro Se Motions Tolloed the Time to File a Motion For Post-Conviction Relief

Mr. Woodley timely raised his claims of ineffective assistance of counsel in pleadings that were mislabeled as "motions" instead of as a "petition" for post-conviction relief. The failure to liberally construe Mr. Woodley's pro se motions as initiating a post-conviction action or as tolling the time to initiate such an action deprives Mr. Woodley of a meaningful opportunity to present his claims in violation of the procedural due process guarantee of the Fourteenth Amendment.

In response to this argument, the state claims the issue was not raised below and has been resolved by *State v. Woodley*, Docket No. 38348 (Ct. App. Aug. 30, 2011). Respondent's Brief, p. 11-12. However, at the hearing on the state's motion for summary dismissal, Mr. Woodley argued:

Now the motion to withdraw a plea may have been titled improperly. If it, if it

would have been construed liberally by right, it could have been construed as a post-conviction procedures motion. It could have been amended to that. It should have been amended to that. The Court should have, should have looked at it, construed it liberally. That's my argument.

Tr. p. 99, ln. 25 - p. 100, ln.7. Mr. Woodley thus argued that his pro se motions should toll the statute of limitations to the district court.

The state is correct in noting that the Court of Appeals refused to consider Mr. Woodley's motion to withdraw his guilty plea as a post-conviction petition in the recent appeal from the district court's denial of his motion to withdraw his guilty plea.² The Court of Appeals was required to reach such holding in light of the Idaho Supreme Court's holding in *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003), which specifically refused to construe a motion to withdraw a guilty plea as initiating a post-conviction action. However, as argued in Mr. Woodley's Opening Brief in this case, the rule in *Jakoski* is fundamentally unfair and deprives pro se inmates of a meaningful opportunity to present their post-conviction claims. Appellant's Brief, p. 11-13.

Accordingly, *Jakoski* should be overruled and Mr. Woodley's pro se motions should be liberally construed as initiating a post-conviction action or as tolling the time to initiate such an action. The failure to do so would deprive Mr. Woodley of a meaningful opportunity to present his claims and would therefore violate the procedural due process guarantee of the Fourteenth

² The appeal from the district court's denial of the motion to withdraw plea was permitted as post-conviction relief on Mr. Woodley's claim that counsel was ineffective for failing to file an appeal from that denial – the only claim that the district court allowed to proceed as timely. R. 248-49. The district court mistakenly believed that the claim “encompassed all of the previous ineffective assistance of counsel claims.” R. 208. However, as evidenced by the Court of Appeals' holding in that appeal, the ineffective assistance of counsel claims could not be reached as a result of the jurisdictional issues implicated by *Jakoski*'s holding.

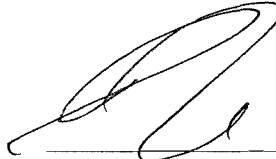
Amendment to the United States Constitution.

III. CONCLUSION

For the reasons set forth above and in his Opening Brief, Mr. Woodley respectfully asks this Court to reverse the district court's order summarily dismissing in part his petition for post-conviction relief and to remand this case to the district court to conduct an evidentiary hearing on the dismissed claims.

Respectfully submitted this 7 day of December, 2011.

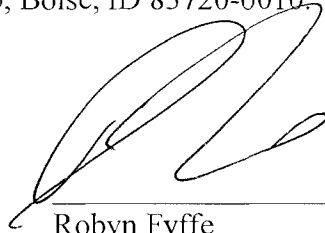
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Attorney for Alexander Jason Woodley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of December, 2011, I caused two true and correct copies of the foregoing to be mailed to: Kenneth K. Jorgensen, Criminal Division, Office of the Attorney General, P.O. Box 83720, Boise, ID 83720-0010.



A handwritten signature in black ink, appearing to read 'Robyn Fyffe', is written over a horizontal line.

Robyn Fyffe