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Arambula v. State Appellant's Reply Brief Dckt. 38698

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Petitioner Armando Arambola asserts the following grounds for Post-Conviction relief:

Ground one

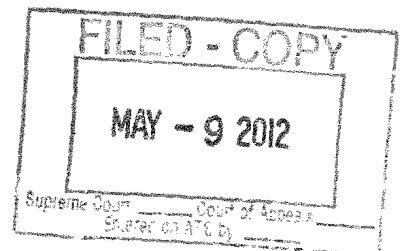
Idaho's Possession of a Controlled Substance Statute is Unconstitutionally Vague

Petitioner Arambola contends that because I.C. § 37-2732 fails to specify a specific amount of substance, he was falsely convicted.

Supreme Court No. 38698

2012 MAY - 9 A 9:45

Brief



Petition For Post Conviction relief - 2(A)

Ground Two

Counsel of record, Ben Anderson, was ineffective for failing to file a motion in limine in an attempt to suppress the narcotics test

Petitioner argues that had Counsel performed an independent examination (AS arambula requested several times) of the States evidence he would have been able to have filed a motion in limine to suppress said evidence based upon those results. The petitioner argues that failure to file a motion to suppress and failure to obtain an independent examination was due to "inadequate preparation" by defense Counsel Ben Anderson. Pratt v. State 134 Idaho 581 (2000). Also that the inadequate preparation showed Counsel's deficiency. The probability of success of such a motion would have been high given there was no actual amount of substance, and it was simply residue on the scale found in petitioners home. Furthermore, officer Ken rivers initial field test ~~was~~ produced negative results.

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It was not until rivers took the Scale back to his office and re-tested the Scale that he found a positive result. Counsel's deficiency prejudiced the outcome of this case because the petitioner would have not chosen to plead guilty had Counsel followed Arambula's defense request and had an independent forensic examination conducted. Counsel Anderson refused stating Arambula would be forced to bear the costs of such a test. Such a test could have and should have been succeeded by a motion to suppress on the basis of inadequate evidence for a charge of possession of a controlled substance.

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Ground Three

Counsel was ineffective for failure to adequately cross examine the States witness

The petitioner contends that States witness Ken Rivers committed perjury at preliminary hearing when he stated that "he had never had a field narcotics test come back negative," or words to that effect. Later Counsel for the petitioner would disclose to his client that he had been involved in other criminal cases where Rivers acted as a witness for the State and had in fact had negative results on those tests. Counsel for the petitioner should have asked the necessary questions on cross examination to impeach witness Rivers. In failing to do so Counsel Anderson disregarded his duty to provide a zealous defense for his client. This deficient performance directly affected the outcome of this case because it inabled Arambula from discrediting the States witness.

Petition For Post Conviction relief - 2(d)

Ground FOUR

Counsel was ineffective for failing to provide the necessary Services due to an indigent Prisoner Pursuant to I.C. § 19-852

Idaho Code is clear when addressing the effective assistance of Counsel for "needy and indigent persons; who are under formal charge of having committed a serious crime. It is stated that those persons under formal charge are "entitled to be represented by an attorney to the same extent as a person having his own Counsel is so entitled; and (2) to be provided with the necessary Services and facilities of representation (INCLUDING INVESTIGATION AND OTHER PREPARATION)." I.C. § 19-852(1) and (2), emphasis mine. During several parts of the criminal proceedings petitioner demanded that his Attorney conduct an independent narcotics examination of the States ~~the~~ evidence. Petitioner's attorney ignored his client's request and instead chose to rely on the States set of facts as well as their forensic examination. In the regard to adequate preparation and examination

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Counsel was deficient. Said deficiency clearly prejudiced the petitioner. For had Counsel conducted an independent examination the defense could have shown there was no testable amount of substance. Moreover, testimony from an independent lab technician would have shown the same. Such evidence would have rendered the States forensic examination unreliable. Ultimately the defense could have moved for dismissal.

Ground Five

Counsel was ineffective for failure to address the vaguely written Chain of Custody

Defense Counsel failed to address the fact that the Chain of Custody was vaguely signed with signatures such as "UPS". Petitioner contends the signature of "UPS" is insufficient and must have an actual name accompanying such a label.

Petition For Post-Conviction relief - 2(F)

Ground Six

The District Court erred in refusing to provide the petitioner with alternate counsel upon multiple requests to the Court

At the beginning of this case the Court appointed the twinfalls County public defenders office. Ben Andersen, public defender, was assigned to the case as Counsel of record. Later at preliminary hearing Arambola requested that he be provided with alternate Counsel because Andersen was not conducting Arambolas defense as he so wished. The Court responded to Arambolas concern stating "it appears as if he is doing a good job so far", or words to that effect. Later while meeting with Andersen at the twinfalls County jail Arambola again expressed his wish to relieve Andersen of his duties as his attorney. Yet again at District Court arraignment Arambola made statements to the Court wishing to have a different attorney. The Court refused to honor this request and made additional comments stating "Mr. Andersen does not have a crystal ball," or words to that effect.

The Court was then prepared to set the case over for jury trial; However, after finding that the Court would not provide Alternate Counsel Arambula agreed to plead guilty. Arambula did so because he felt he was being deprived of his right to prepare his own defense when the Court refused to replace Andersen. The Court continued the case for acceptance of a guilty plea later that afternoon. The Sixth and the Fourteenth amendments to the United States Constitution guarantee basic rights to assure the accused of a fair Adversarial proceeding. These rights are well established. The Sixth amendment provides the "Assistance of Counsel" to supplement other rights of defendants. In addition to these rights prior Courts have held that "The Constitution does not force a lawyer upon a defendant." ex rel McCann 317 U.S. 279. The United States Supreme Court has also held that "A defendant in a State Criminal trial has an independent ~~right~~ Constitutional right of Self representation." Faretta v. California 422 U.S. 806. Although Arambula did not elect to represent himself, his case poses a Sixth amendment violation similar to Faretta's.

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Arambula wished to have alternate Counsel because Public defender Andersen would not conduct his defense as he so wished. This holds similar to why Faretta wished to represent himself. He wanted his defense conducted as he so chose, not at the whim of a public defender whose office was "very loaded down with a heavy case load." Faretta at 422 U.S. 807. There were various times where Arambula brought to the Courts attention that he was dissatisfied with Counsel's performance and preferred alternative Counsel who would follow his instructions with regard to his defense. "To thrust Counsel upon the accused, against his considered wish, thus violates the logic of the [Sixth] Amendment." Faretta 422 U.S. 820.

Arambula was dissatisfied with Counsel Andersen's performance because he refused to conduct the necessary pre-trial investigation afforded to him through I.C. § 19-852. Arambula requested that Andersen have an independent forensic examination conducted on the digital scale, which the State claimed had remnants of methamphetamine on it. Andersen refused claiming Arambula would be forced to pay for the independent lab test despite

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being an indigent inmate. The initial Field test conducted by officer Ken Rivers was negative. It was not until officer Rivers took the Scale back to the Station and re-tested the Scale that he found positive results for Methamphetamine. This was the logic behind Arambula's request for the independent ~~for~~ forensic examination. Moreover, it was necessary for his defense. Later officer Ken Rivers would testify at preliminary hearing that he had never had a field test come back negative. After the hearing Counsel Andersen disclosed to Arambula that ~~that~~ he knew Rivers had lied about not having field test come back negative. Andersen stated he had been appointed to represent other defendants where Rivers had in fact had field tests come back negative. Arambula argued with Andersen insisting he should have brought this to the court's attention through cross examination. When Andersen refused this only furthered the petitioner's wish to relieve him as Counsel. Arambula attempted to do so at district court arraignment to no avail. It was only at this time Arambula relented to pleading guilty. This logic violates the Sixth Amendment. The Sixth Amendment provides "The ~~Accused~~ Accused

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Shall enjoy.... and to have assistance of Counsel for his defense." U.S. Const. Amm. VI. Basically it is the defendant who is responsible for the preparation of his defense to Criminal accusations. The defendant inherently enjoys the right to the assistance of Counsel for preparation of that defense, whatever that defense may be. When the Court Forces an Attorney upon a defendant who is unwilling to assist in the preparation of a defense, such logic violates the Sixth Amendment. For it is then the Attorney who becomes the master as opposed to the defendant.

Had the Court provided Arambula with alternate Counsel such Counsel could have conducted the necessary pre-trial investigation to present an exculpatory defense at trial. This is what Arambula wanted. Alternate and willing Counsel could have made arguments against the States evidence at trial, or even for suppression of the evidence. Arguments could have been made that there wasn't even a testable amount of methamphetamine and that the type of methamphetamine was never identified. Also that the chain of custody did not conform to standards of prior court rulings and

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had vague information listed such as "UPS".

The Actions of Arambula's Attorney Andersen Prejudiced the Outcome of this Case because without the necessary Assistance of Counsel for his defence Arambula was forced to plead guilty. Had Arambula had the necessary Assistance to prepare a defence he would not have plead guilty.

In deciding Faretta the Court delivers a detailed opinion about the history of the American Judicial System and its roots dating back to the 16th Century. While that opinion makes a showing by centuries of consistent history that a defendant has long been afforded the right to represent himself; it also shows that Courts must not deprive defendants of their Constitutional right to prepare their own defense. In forcing Arambula to proceed with counsel who refused to aid in the preparation of ~~his~~ his defense, the Court handicapped the defendant and violated his Sixth Amendment right.

Petition For Post Conviction Relief - 2(L)