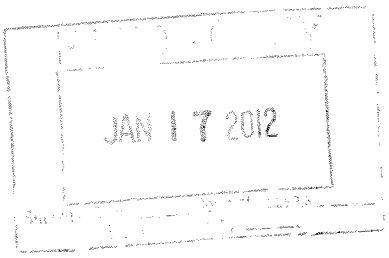
1-17-2012

Caplinger v. State Appellant's Brief Dckt. 38745

IN THE SUPREME COURT OF THE STATE OF IDAHO



NEAL WAYNE CAPLINGER,	)	
	)	
Petitioner-Appellant,	)	NO. 38745
	)	
v.	)	
	)	
STATE OF IDAHO,	)	APPELLANT'S BRIEF
	)	
Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE CHERI C. COPSEY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

In 2008, in a separate criminal case, Neal Caplinger was convicted of one count of second degree kidnapping. He received a unified sentence of fifteen years, with five years fixed.

In 2010, Mr. Caplinger initiated the present case by filing a petition for post-conviction relief. In his petition, Mr. Caplinger presented approximately twelve claims for relief (with the precise number depending on how the claims in his *pro se* petition are characterized and grouped). Among the claims presented was the contention that the use of a grand jury proceeding in his criminal case was unconstitutional. Ultimately though, the district court summarily dismissed this claim on the basis that Mr. Caplinger had failed to cite any legal authority in support of his claim.

On appeal, Mr. Caplinger contends that the district court erred in dismissing his "grand jury" claim on the basis that it did, and he requests that this claim be remanded to the district court for further proceedings.

Statement of the Facts and Course of Proceedings

In 2008, in a separate criminal case, Neal Caplinger was convicted of one count of second degree kidnapping. (*See* R., p.14.) He received a unified sentence of fifteen years, with five years fixed. (R., p.14.) His conviction and sentence were affirmed on appeal. *See State v. Caplinger*, No. 35782, 2009 Unpublished Opinion No. 582 (Ct. App. Aug. 25, 2009).

On or about August 27, 2010, Mr. Caplinger filed a verified *pro se* petition for post-conviction relief, and a supporting affidavit, collaterally attacking his 2008

conviction. (*See* R., pp.14-22 (verified petition), pp.23-24.) Between those two documents, Mr. Caplinger asserted approximately twelve claims for relief (depending on how the claims are characterized and grouped). (*See generally* R., pp.14-24 (petition and affidavit); *see also* R., p.58 (district court's summary of the claims presenting, identifying ten different claims), p.76 (same).) Among the claims presented in Mr. Caplinger's petition for post-conviction relief was his assertion that use of a grand jury proceeding in his criminal case was unconstitutional. (R., pp.16, 23.)

The State never filed an answer, or any sort of motion for summary dismissal. (*See generally* R.) Rather, the district court simply scheduled an evidentiary hearing on two of Mr. Caplinger's claims, thus foreshadowing its eventual summary dismissal of the rest of his claims. (*See* R., pp.38-39 ("Having reviewed the Petition, the Court finds that an evidentiary hearing is necessary for the limited purpose of determining whether trial counsel was ineffective for failing to move to suppress Caplinger's statements made to law enforcement on January 13, 2008, and whether his trial counsel shared discovery with Caplinger. . . . Therefore, the Court orders that an evidentiary hearing be held . . . ."); *see also* Tr. Vol. II, p.98, Ls.20-24 (district court concluding the evidentiary hearing by commenting that "there's more that was raised in the petition and I will address all of those. I think they can be summarily addressed.").)[1] That evidentiary

[1] The Reporter's Transcript in this case is comprised of two separately-bound volumes. The volume containing the transcript of the January 19, 2011 hearing is referenced herein as "Tr. Vol. I," while the volume containing the transcript of the February 23, 2011 hearing is referenced as "Tr. Vol. II." There are also two transcripts (from Mr. Caplinger's underlying criminal case) that are included as exhibits to the Clerk's Record; however, those transcripts are not cited herein.

hearing was not intended to address Mr. Caplinger's "grand jury" claim (*see* R., pp.38-39); nor did it (*see generally* Tr. Vol. II).

On February 28, 2011, shortly after a limited evidentiary hearing had been held, the district court issued an Order Conditionally Dismissing Petition. (R., pp.50-66.) In that notice, the district court gave notice of its intent to summarily dismiss Mr. Caplinger's "grand jury" claim. (R., p.59.) The whole of the district court's reasoning was stated as follows:

> Without any argument or support, Caplinger simply claims that Idaho's indictment process is unconstitutional. He does not cite any case law at all. The Court need not consider an issue not "supported by argument and authority . . . ." *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010); *Jorgensen v. Coppedge*, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008); *Huff v. Singleton*, 143 Idaho 498, 501, 148 P.3d 1244, 1247 (2006).

(R., p.59.) The district court then gave Mr. Caplinger twenty days in which to respond to its notice. (*See* R., pp.51, 66.)

Mr. Caplinger never responded to the district court's February 28, 2011 notice of its intent to dismiss his petition. (R., p.69.) Thus, on March 30, 2011, the district court went on to summarily dismiss Mr. Caplinger's post-conviction petition. (R., pp.68-83.) With regard to the "grand jury" claim presented in Mr. Caplinger's petition, the district court dismissed based on the same reasoning presented in its earlier notice, *i.e.*, Mr. Caplinger's failure to cite legal authority in support of his claim. (R., p.77.)

On April 21, 2011, Mr. Caplinger filed a notice of appeal (R., pp.85-86) that was timely from the district court's March 30, 2011 summary dismissal order. *See* I.A.R. 14(a). On appeal, Mr. Caplinger contends that the district court erred in dismissing his "grand jury" claim on the basis that it did. He requests that this claim be remanded to the district court for further proceedings.

ISSUE

Did the district court err in summarily dismissing Mr. Caplinger's "grand jury" claim on the basis that Mr. Caplinger's *pro se* petition for post-conviction relief failed to cite legal authority?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Caplinger's "Grand Jury" Claim On The Basis That His *Pro Se* Petition For Post-Conviction Relief Failed To Cite Legal Authority

A petition for post-conviction relief initiates a proceeding that is separate and distinct from the underlying criminal action which led to the petitioner's conviction. *Peltier v. State*, 119 Idaho 454, 456 (1991). It is a civil proceeding governed by the Uniform Post-Conviction Procedure Act (*hereinafter,* UPCPA) (I.C. §§ 19-4901 to -4911) and the Idaho Rules of Civil Procedure. *Peltier*, 119 Idaho at 456. Because it is a civil proceeding, the petitioner must prove his allegations by a preponderance of the evidence. *Martinez v. State*, 126 Idaho 813, 816 (Ct. App. 1995).

Just as I.R.C.P. 56 allows for summary judgment in other civil proceedings, the UPCPA allows for summary disposition of petitions where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. I.C. § 19-4906(c).[2] If a question of material fact is presented, the district court must conduct an evidentiary hearing to resolve that question. *Small v. State*, 132 Idaho 327, 331 (Ct. App. 1998). If there is no question of fact, and if the State is entitled to judgment as a matter of law, dismissal can be ordered *sua sponte*, or pursuant to the State's motion. I.C. § 19-4906(b), (c).

If the district court orders dismissal *sua sponte*, it must first give the petitioner twenty days' notice and allow the petitioner to respond to the notice. I.C. § 19-4906(b).

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[2] Although this standard is set forth in section 19-4906(b), which deals with motions for summary disposition, it appears to apply to *sua sponte* dismissals as well. *See, e.g., Small v. State*, 132 Idaho 327, 331 (Ct. App. 1998) (discussing the standard for summary disposition under section 19-4906 *generally* as being whether a genuine issue of material fact has been presented).

The purpose of this requirement is to give the petitioner an opportunity to challenge the decision before it is finalized. *Baruth v. Gardner*, 110 Idaho 156, 159-60 (Ct. App. 1986). Thus, this requirement is strict; it makes no difference whether the petitioner's claims are meritorious or not. *Cherniwchan v. State*, 99 Idaho 128, 129-30 (1978). Moreover, vague notice of the district court's intent to dismiss is insufficient. The district court must be specific as to the bases for the intended dismissal so as to provide the petitioner with a *meaningful* opportunity to respond. *Banks v. State*, 123 Idaho 953, 954 (1993).

In this case, the only basis for dismissal for which Mr. Caplinger was given prior notice was actually no basis for dismissal at all. As noted, the district court summarily dismissed Mr. Caplinger's "grand jury" claim on the basis that he had failed to cite legal authority for his claim in his *pro se* petition. However, there is no requirement that a *pro se* petition for post-conviction relief contain citations to legal authority. In fact, quite the opposite is true. The UPCPA specifically provides that, in submitting an application for post-conviction relief, "[a]rgument, citations, and discussions of authorities are unnecessary." I.C. § 19-4903. Furthermore, the authorities relied upon by the district court in asserting that such citations are required in post-conviction petitions (*see* R., pp.59, 77 (citing *Bach*, *Jorgensen*, and *Huff*)) are wholly inapplicable, as they all deal with a parties' failure to cite authorities *on appeal*, as is required by Idaho Appellate Rule 35. *See Bach*, 148 Idaho at 790 (citing I.A.R. 35 and stating that "[t]he bulk of Bach's claims on appeal will not be considered by the Court because Back has failed to support them with relevant argument and authority"); *Jorgensen*, 145 Idaho at 528 ("We will not consider assignment of error not supported by argument and authority in the

opening brief."); *Huff*, 143 Idaho at 501 ("Idaho Appellate Rule 35 requires parties to list and argue issues presented on appeal. When issues presented on appeal are not supported by propositions of law, citation to legal authority, or argument they will not be considered by this Court.").

Whatever problems may exist with Mr. Caplinger's "grand jury" claim, his failure to cite legal authority in his *pro se* petition was not one of them. Therefore, it was error for the district court to have summarily dismissed that claim on that basis. And, because that basis was the only one for which Mr. Caplinger had prior notice, this Court may not affirm the district court's dismissal on an alternative theory. *See* I.C. § 19-4906(b); *cf. Baxter v. State*, 149 Idaho 859, 864-65 (Ct. App. 2010) (affirming the district court's summary dismissal decision on alternate grounds *for which the petitioner was given prior notice*); *Ridgley v. State*, 148 Idaho 671, 676-77 (2010) (same). Accordingly, Mr. Caplinger's "grand jury" claim should be remanded to the district court for further proceedings and, if it is still the district court's intention to dismiss his claim at that time, proper notice should be provided to Mr. Caplinger and he should be given time in which to respond—either through argument or a motion for leave to file an amended petition. *See* I.C. § 19-4906(c).

CONCLUSION

For the foregoing reasons, Mr. Caplinger requests that the district court's order summarily dismissing his petition for post-conviction relief be vacated, and that his case be remanded to the district court for further proceedings on his "grand jury" claim.

DATED this 17th day of January, 2012.

ERIK R. LEHTINEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of January, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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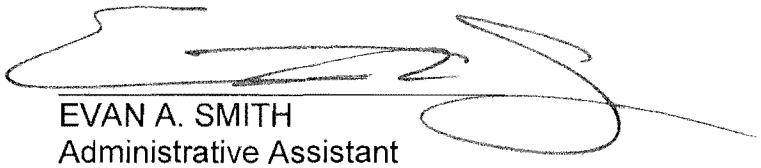

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