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Caplinger v. State Respondent's Brief Dckt. 38745

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

NEAL W. CAPLINGER)	
)	
Petitioner-Appellant,)	NO. 38745
)	
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

BRIEF OF RESPONDENT

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

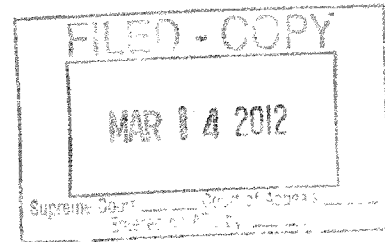
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of Facts And Course Of The Underlying Proceedings.....	1
ISSUE	3
ARGUMENT	4
Caplinger Failed To Raise A Genuine Issue Of Material Fact That Would Entitle Him To Relief On His Claim That Idaho's Indictment Process Is Unconstitutional.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. Caplinger Has Failed To Establish He Was Entitled To Relief On His Claim That Idaho's Indictment Process Is Unconstitutional Because It Deprives Him Of An Evidentiary Hearing Fails As A Matter Of Law.....	4
CONCLUSION	7
CERTIFICATE OF SERVICE.....	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Bach v. Bagley</u> , 148 Idaho 784, 229 P.3d 1146 (2010).....	5
<u>DeRushé v. State</u> , 146 Idaho 599, 200 P.3d 1148 (2009).....	6
<u>Gilpin-Grubb v. State</u> , 138 Idaho 76, 57 P.3d 787 (2002)	4
<u>Huff v. Singleton</u> , 143 Idaho 498, 148 P.3d 1244 (2006).....	5
<u>Jorgensen v. Coppedge</u> , 145 Idaho 524, 181 P.3d 450 (2008).....	5
<u>Pratt v. State</u> , 134 Idaho 581, 6 P.3d 831 (2000).....	5
<u>State v. Caplinger</u> , 2009 Unpublished Opinion No. 582 (Ct. App. August 25, 2009)	1
<u>State v. Lovelace</u> , 140 Idaho 53, 90 P.3d 278 (2003)	4
<u>Warren v. Craven</u> , 2011 WL 119886 (Ct. App. 2012).....	6
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007)	4
 <u>STATUTES</u>	
I.C. § 19-1201	7
I.C. § 19-1308	7
I.C. § 19-4903	5
I.C. § 19-4906	4, 7

STATEMENT OF THE CASE

Nature Of The Case

Neal Wayne Caplinger appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Statement Of Facts And Course Of The Underlying Proceedings

In 2008, the state filed an Indictment charging Caplinger with first-degree kidnapping, rape, and penetration by a foreign object. (#35782 R.¹, pp.6-7.) The state also filed an Indictment Part II alleging Caplinger is a persistent violator. (#35782 R., pp.8-9.) Pursuant to a plea agreement, Caplinger pled guilty to an amended charge of second-degree kidnapping and the state agreed to dismiss the other charges, including the persistent violator enhancement. (#35782 R., pp.22-36.) The court imposed a unified fifteen-year sentence with five years fixed (#35782 R., pp.46-48), which the Idaho Court of Appeals affirmed on appeal, State v. Caplinger, 2009 Unpublished Opinion No. 582 (Ct. App. August 25, 2009). The Remittitur issued September 28, 2009.

On August 27, 2010, Caplinger filed a *pro se* post-conviction petition alleging he was entitled to relief because: (1) he was only appointed one attorney even though he could have "face[d] [the] death penalty"; (2) the prosecutor withheld "favorable information" from the grand jury in order to obtain an indictment; (3) ineffective assistance of counsel; (4) he was not advised of his rights prior to making statements; (5) Idaho's "Indictment prosses [sic] is

¹ The district court took judicial notice of the underlying record in State v. Caplinger, Ada County Case No. CR-FE-2008-8100 (Idaho Supreme Court Docket No. 35782). (R., p.26.)

unconstitutional” because it deprives a defendant of a preliminary hearing; and (6) the state withheld discovery. (R., pp.15-16.) Caplinger also filed a motion for the appointment of counsel, which the district court granted. (R., pp.10-12, 26.) The court gave counsel the opportunity to file an amended petition, but counsel elected not to do so. (R., pp.36, 38.) After the deadline for filing additional pleadings, the court scheduled a “limited evidentiary hearing” on two of Caplinger’s ineffective assistance of counsel claims. (R., pp.38-39.)

Following the evidentiary hearing, the court entered an order conditionally dismissing Caplinger’s petition in which it set forth the reasons the court intended to dismiss each of Caplinger’s claims. (R., pp.50-66.) The court gave Caplinger 20 days in which to respond. (R., p.51.) Caplinger did not respond to the court’s conditional dismissal order and the court entered a final order dismissing Caplinger’s petition. (R., pp.68-83.) Caplinger timely appealed. (R., pp.85-86.)

ISSUE

Caplinger states the issue on appeal as:

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?

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Has Caplinger failed to meet his burden of establishing he raised a genuine issue of material fact that would entitle him to relief on his claim that Idaho's indictment process is unconstitutional?

ARGUMENT

Caplinger Failed To Raise A Genuine Issue Of Material Fact That Would Entitle Him To Relief On His Claim That Idaho's Indictment Process Is Unconstitutional

A. Introduction

Caplinger asserts the district court erred in summarily dismissing his claim that Idaho's indictment process is unconstitutional because, he asserts, the court's reason for dismissal was not legitimate. (Appellant's Brief, p.3.) Caplinger's claim fails because the court's notice adequately advised him of the reasons for dismissal and his claim regarding the constitutionality of the indictment process fails as a matter of law.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Caplinger Has Failed To Establish He Was Entitled To Relief On His Claim That Idaho's Indictment Process Is Unconstitutional Because It Deprives Him Of An Evidentiary Hearing Fails As A Matter Of Law

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief in response to a party's motion or on the court's own initiative. "To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." State v. Lovelace,

140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)).

In its conditional dismissal order, the court set forth the legal standards applicable to summary dismissal. (R., pp.56-58.) Those standards included notice that the court was “not required to accept mere conclusory allegations, unsupported by admissible evidence, or accept petitioner’s conclusions of law” (R., p.57), and that it was Caplinger’s burden to “allege facts which, if true, would entitle [him] to relief” (R., p.58). With respect to Caplinger’s specific challenge to Idaho’s indictment process, entitled “Caplinger’s Indictment Claims Are Without Merit,” the court stated:

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). Therefore, the Court intends to dismiss this claim.

(R., p.59.)

Caplinger complains that his failure to cite authority was not a legitimate basis for dismissal because, he argues, “there is no requirement that a *pro se* petition for post-conviction relief contain citations to legal authority,” rather I.C. § 19-4903 “specifically provides that, in submitting an application for post-conviction relief, ‘[a]rgument, citations, and discussions of authorities are unnecessary.’” (Appellant’s Brief, p.6 (quoting I.C. § 19-4903, alteration by Caplinger).) While it is true that Caplinger was not required to include citations to authority in his petition, he was required, as the court explained, to allege facts

that would entitle him to relief, which he failed to do, and the court was not required to accept his legal conclusion that the state's "indictment process is unconstitutional." The court's reference to his failure to cite legal authority encompasses that principle. Moreover, the statutory provision excusing Caplinger from citing legal authority in his petition does not excuse him from citing relevant legal authority once the court indicates its intent to dismiss unless legal authority is provided, particularly where, as here, Caplinger was represented by counsel. DeRushé v. State, 146 Idaho 599, 200 P.3d 1148 (2009), is instructive on this point.

In DeRushé, the Idaho Supreme Court held that a petitioner may not "raise the alleged lack of specificity [in a state's motion for summary dismissal] for the first time on appeal." 146 Idaho at 602, 200 P.3d at 1151. Similarly, if Caplinger perceived some defect in the court's notice, he should have raised it to the district court when given the opportunity to do so. See DeRushé, 146 Idaho at 602, 200 P.3d at 1151 ("If the grounds lacked sufficient particularity, DeRushé should have presented that issue to the district court and obtained a ruling on it."). Most likely, post-conviction counsel perceived no such defect because Caplinger's claim that Idaho's indictment process is unconstitutional because it does not provide for a preliminary hearing fails as a matter of law. See Warren v. Craven, 2011 WL 119886 *3 (Ct. App. 2012) ("On any felony criminal charge, the State may proceed by indictment or information. . . . [I]n line with state constitutional and statutory requirements, the district courts of this state have jurisdiction to hear felony cases after a preliminary examination and filing of an

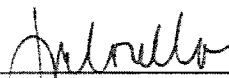
information – without the charge ever being before a grand jury.”); compare I.C. § 19-1201 (presentment found by grand jury) with § 19-1308 (requiring preliminary hearing when proceeding by information).

Caplinger, having failed to cite any legal authority for his claim that he had a constitutional right to a preliminary hearing and information instead of a grand jury indictment, failed to establish he was entitled to post-conviction relief, and no purpose would have been served by further proceedings. I.C. § 19-4906(b) (“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.”). Caplinger has failed to establish the district court erred in summarily dismissing his petition.

CONCLUSION

The state respectfully requests this Court affirm the district court’s order dismissing Caplinger’s petition for post-conviction relief.

DATED this 14th day of March, 2012.



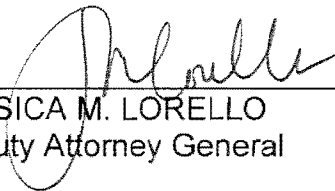
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of March, 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIK R. LEHTINEN
CHIEF DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



JESSICA M. LORELLO
Deputy Attorney General