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Caplinger v. State Appellant's Reply Brief Dckt. 38745

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 38745
)
 v.)
)
 NEAL WAYNE CAPLINGER,) REPLY BRIEF
)
 Defendant-Appellant.)
 _____)

COPY

REPLY BRIEF OF APPELLANT

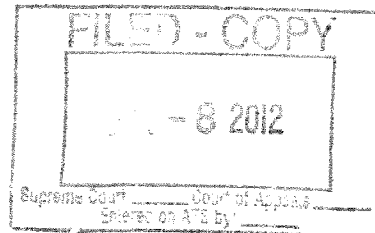
APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE CHERI C. COPSEY
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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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 (the precise number depends 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 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.

In response, the State distorts the district court’s basis for dismissing Mr. Caplinger’s “grand jury” claim and, having so mischaracterized the basis for dismissal, then goes on to distort Mr. Caplinger’s claim on appeal, falsely characterizing it as a challenge to the adequacy of the district court’s notice. (See Respondent’s Brief, pp.5-7.)

The present Reply Brief is necessary to respond to the State’s “straw man” argument.

Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were previously articulated in Mr. Caplinger's Appellant's Brief and, therefore, are not repeated herein.

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

As was discussed in Mr. Caplinger's Appellant's Brief (pp.3 & 6), the district court summarily dismissed Mr. Caplinger's "grand jury" claim on the basis that Mr. Caplinger failed to support his claim with argument or authority. Specifically, the district court rules 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.)

Mr. Caplinger contends that this is not a proper basis for dismissal of a post-conviction claim. As was explained in Mr. Caplinger's Appellant's Brief (pp.6-7), the authorities relied upon by the district court are wholly inapplicable because they relate to the obligation of a party *to an appeal* to provide argument and authority in support of his claim *on appeal* pursuant to Idaho Appellate Rule 35, and because, in fact, 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.

In response, the State attempts to mischaracterize both the district court's order and Mr. Caplinger's claim on appeal. The State begins by mischaracterizing the district court's basis for dismissing Mr. Caplinger's "grand jury" claim. The State claims that, in stating that Mr. Caplinger's "grand jury" claim was subject to dismissal for his failure to meet his obligation (under Idaho Appellate Rule 35) to provide argument and authority

in support of his claim, what the district court was *really* saying was that his claim was subject to dismissal because Mr. Caplinger failed “to allege facts that would entitle him to relief” and relied exclusively on legal conclusions which need not have been accepted as true. (Respondent’s Brief, pp.5-6.) Having so distorted the district court’s dismissal order, the State relies on the fact that, *elsewhere in its dismissal order*, the district court had observed that under existing law it 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)” (Respondent’s Brief, p.5 (quoting other portions of district court’s order)), and mischaracterizes Mr. Caplinger’s claim on appeal as a challenge to the adequacy or specificity of the district court’s notice. (Respondent’s Brief, pp.5, 6.) Finally, having distorted both the basis for the district court’s dismissal order, as well as the claim presented on appeal, the State claims that this claim is procedurally defaulted because the adequacy of the notice was not challenged below (Respondent’s Brief, p.6 (citing *DeRushe v. State*, 146 Idaho 599, 602 (2009)) and, besides, it was properly dismissed on the grounds supposedly employed by the district court (Respondent’s Brief, p.7).

The State’s characterization of the district court’s basis for dismissal of the “grand jury” claim is intellectually dishonest. The district court’s basis for dismissal of that claim is clear on the face of the conditional dismissal order, and is in no way susceptible to the interpretation now ascribed to it by the State. That basis, set forth in its own section the district court’s conditional dismissal order bearing the heading “II. Caplinger’s Indictment Claims Are Without Merit,” was 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.) As discussed above, this was a clear reference to I.A.R. 35's standard for briefs on appeal. For the State to now suggest that this was an inartful attempt by the district court to identify and apply UPCPA-appropriate standards is simply meritless. If this was the district court's intent, then this is what the district court would have done. (See R., p.57 (identifying UPCPA-appropriate standards, and citing UPCPA-appropriate authority elsewhere in the conditional dismissal order).) This Court should not indulge the State's request to re-write the district court's basis for dismissal of Mr. Caplinger's "grand jury" claim to turn it into what the State feels the basis for dismissal *should have* been.

Further, as noted, the State characterizes Mr. Caplinger's argument on appeal as a complaint about the adequacy or specificity of the district court's notice. Again, the State is being dishonest. In his Appellant's Brief, Mr. Caplinger clearly challenged the basis for dismissal; he most certainly did not challenge the adequacy or specificity of the notice provided by the district court.¹

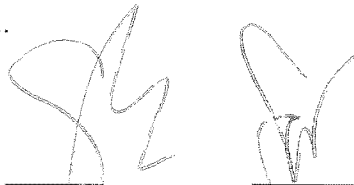
¹ (See, e.g., Appellant's Brief, p.1 ("On appeal, Mr. Caplinger contends that the district court erred in dismissing his 'grand jury' claim on the basis that it did"), p.3 ("On appeal, Mr. Caplinger contends that the district court erred in dismissing his 'grand jury' claim on the basis that it did."), p.4 (characterizing the issue on appeal as follows: "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?"), p.5 (summarizing the argument on appeal as follows: "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"), p.6 ("In this case, the only basis for dismissal for which Mr. Caplinger was given prior notice was actually no

Because the State's arguments on appeal rely on gross mischaracterizations of the district court's reason for summarily dismissing Mr. Caplinger's "grand jury" claim and Mr. Caplinger's argument on appeal, they should be rejected. This court should look to the district court's actual basis for dismissal of the "grand jury" claim, recognize that such a basis is not, in fact, an appropriate basis for dismissal, and remand the "grand jury" claim to the district court for further proceedings.

CONCLUSION

For the reasons set forth above, and in his Appellant's Brief, 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 8th day of June, 2012.



ERIK R. LEHTINEN
Chief, Appellate Unit

basis for dismissal at all."), p.7 ("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.".)

CERTIFICATE OF MAILING

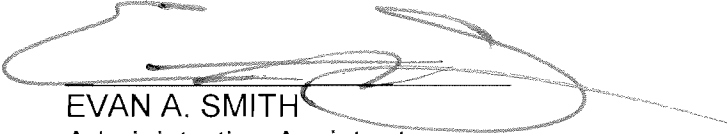
I HEREBY CERTIFY that on this 8th day of June, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

NEAL WAYNE CAPLINGER
INMATE #20121
ICC
PO BOX 70010
BOISE ID 83707

CHERI C COPSEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

PAUL R TABER III
ADA COUNTY PUBLIC DEFENDER'S OFFICE
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court.


EVAN A. SMITH
Administrative Assistant

ERL/eas