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Block v. State Respondent's Brief Dckt. 38962

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

BRANDON KEITH BLOCK,)	
)	
Petitioner-Appellant,)	NO. 38962
)	
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

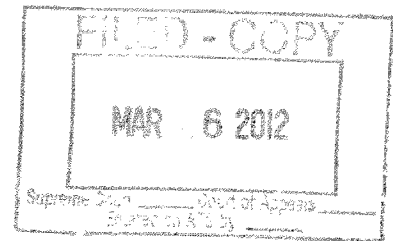
HONORABLE MICHAEL E. WETHERELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Brandon Keith Block appeals, *pro se*, from the district court's order summarily dismissing his untimely petition for post-conviction relief.

Statement of Facts and Course of Proceedings

The district court set forth the facts and procedure of the underlying criminal case as follows:

On June 9, 2008, [the district] court sentenced Mr. Block on one count of Lewd Conduct with a minor Under the Age of Sixteen (I.C. § 18-1508) to a term of six (6) years fixed incarceration with and [sic] additional fourteen (14) indeterminate, with the Court retaining jurisdiction. Following his rider, on November 26, 2008, Mr. Block was placed on probation for a term of twenty (20) years. However, the State filed a motion for probation violation on February 8, 2010. Mr. Block admitted four of the five allegations in the motion for probation violation, and the Court imposed Mr. Block's underlying sentence on April 27, 2010.

(R., p.57.) Block did not appeal from the judgment of conviction. (R., p.57; Tr., p.7, L.14 – p.10, L.16, p.12, Ls.9-13.)

Block filed a *pro se* petition for post-conviction relief and affidavit in support thereof on March 2, 2011. (R., pp.4-10.) At Block's request, the district court appointed counsel to represent Block in the post-conviction proceeding. (R., pp.18-21, 23-25.) The state thereafter moved to dismiss the petition, arguing, *inter alia*, that the petition was untimely. (R., pp.26-39.) Following a hearing on the timeliness issue (see generally Tr.), the district court entered an order dismissing Block's petition on the basis that it was not timely filed (R., pp.57-61). Block timely appealed. (R., pp.62-64.)

ISSUES

Block's issue statement is set forth at page 6A of his Appellant's brief and, due to its length, is not repeated here.

The state rephrases the issues on appeal as:

1. Block challenges the summary dismissal of his post-conviction petition but does not claim error in relation to the district court's determination that the petition was not timely filed. Must the district court's order of summary dismissal be affirmed on this unchallenged basis?
2. Alternatively, did the district court correctly apply the law to the undisputed facts in summarily dismissing Block's post-conviction petition as untimely?

ARGUMENT

I.

The Order Of Summary Dismissal Must Be Affirmed On The Unchallenged Basis That The Petition Was Not Timely Filed

Where a basis for a ruling by a district court is unchallenged on appeal, the appellate court will affirm on the unchallenged basis. See State v. Goodwin, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998). Here, the district court summarily dismissed Block's post-conviction petition on the basis that the petition was not timely filed and Block failed to present any evidence to establish that the statute of limitation should be tolled. (R., pp.57-61.) Block challenges the dismissal of his petition, generally, but he does not claim error in the district court's determination that the petition was time-barred. (See generally Appellant's brief.) The district court's order of dismissal must therefore be affirmed on this unchallenged basis.

II.

The District Court Correctly Applied The Law To The Facts In Dismissing Block's Post-Conviction Petition As Untimely

A. Introduction

Even if this Court does not affirm solely on the basis that Block has failed to challenge the only ground for dismissal articulated by the district court, the order of summary dismissal must nevertheless be affirmed because a review of the record and the applicable law support the district court's determination that the petition was untimely.

B. Standard Of Review

The applicability of a statute of limitations to an action under a given set of facts is a question of law subject to free review on appeal. State v. O'Neill, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990); Cochran v. State, 133 Idaho 205, 206, 984 P.2d 128, 129 (Ct. App. 1999).

C. The District Court Correctly Dismissed Block's Post-Conviction Petition As Untimely

Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition "any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of proceedings following an appeal, whichever is later." Absent a showing by the petitioner that the one-year statute of limitation should be tolled, the failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Evensiosky v. State, 136 Idaho 189, 30 P.3d 967 (2001); Sayas v. State, 139 Idaho 957, 959, 88 P.3d 776, 778 (Ct. App. 2003).

The district court entered judgment and sentenced Block to a period of retained jurisdiction on June 9, 2008. (R., p.57.) Block never filed a notice of appeal from the judgment of conviction and, as such, that judgment became final on January 7, 2009 – 42 days after the district court entered its November 26, 2008 order placing Block on probation following the period of retained jurisdiction. See I.A.R. 14 (2009)¹ (appeal must be filed within 42 days of

¹ Pursuant to a 2011 amendment, I.A.R. 14 now requires an appeal challenging a criminal judgment to "be brought within 42 days of that judgment," regardless of whether the district court retained jurisdiction.

judgment but, “[i]n a criminal case, the time to file an appeal is enlarged by the length of time the district court actually retains jurisdiction When the court releases its retained jurisdiction or places the defendant on probation, the time within which to appeal shall commence to run.”). Therefore, to be timely, Block’s post-conviction petition must have been filed on or before January 7, 2010 – one year from the expiration of Block’s time to appeal the judgment. I.C. § 19-4902(a). Block, however, did not file his post-conviction petition until March 2, 2011 (R., p.4), more than two years after his judgment became final, and nearly 14 months after the limitation period of I.C. § 19-4902(a) had expired.

Because Block did not file his post-conviction petition within one year of the final determination of his conviction, the petition was untimely on its face and was subject to summary dismissal unless Block alleged facts sufficient to establish a *prima facie* case for equitable tolling. As noted by the district court in its order summarily dismissing Block’s petition (R., p.59), the only three circumstances in which Idaho recognizes equitable tolling are: (1) “where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials,” Sayas, 139 Idaho at 960, 88 P.3d at 779; (2) “where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction,” Id.; and (3) where there are “claims which simply [were] not known to the defendant within the time limit, yet raise important due process issues,” Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009) (quoting Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870,

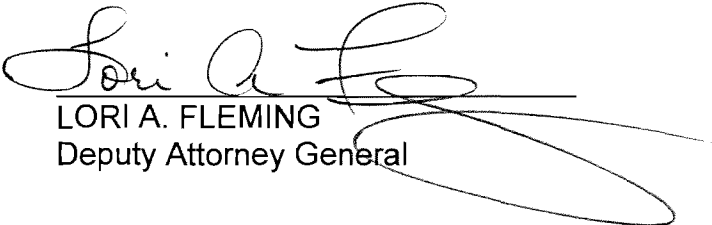
874 (2007)). Block's petition did not allege any of the foregoing bases (or any basis at all) as a reason to toll the limitation period for filing his petition. (See generally R., pp.4-10.) In addition, Block admitted at the hearing on the timeliness issue that he was always incarcerated in Idaho and that his "failure to file a timely post conviction petition was essentially [the result of his] own ignorance." (Tr., p.12, L.25 – p.13, L.25.) Having failed to present any evidence to support a claim of equitable tolling, Block failed to establish any basis why his petition should not be dismissed as untimely.

Because Block failed to file his post-conviction petition within the one-year limitation period of I.C. § 19-4902, and because he failed to allege any facts to establish a basis for equitable tolling, he has failed to show any basis for reversal of the district court's order summarily dismissing his petition for post-conviction relief as untimely.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Block's petition for post-conviction relief.

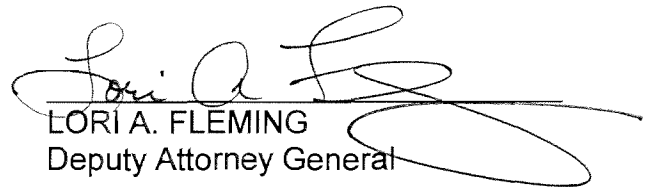
DATED this 26th day of March 2012.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of March 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

BRANDON KEITH BLOCK
IDOC #85838
ICC
PO BOX 70010
BOISE, ID 83707


LORI A. FLEMING
Deputy Attorney General

LAF/pm