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Dill v. State Respondent's Brief Dckt. 38979

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

MICHAEL SHAUN DILL)	
)	
Petitioner-Appellant,)	NO. 38979
)	
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

**HONORABLE DAVID C. NYE
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Michael Shaun Dill appeals from the district court's summary dismissal of his successive petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

According to Dill's allegations, on April 19, 2004, the district court entered judgment of conviction on Dill for the crime of rape and sentenced Dill to a unified term of 12 years with three years fixed. (R., p.2.) Dill did not appeal from the judgment of conviction. (R., p.3.) On January 12, 2010, Dill filed a petition for post-conviction relief alleging violations of his Fifth and Sixth Amendment rights and violations under Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006). (R., p.46.) On January 29, 2010, the district court issued its Notice of Intent to Dismiss Petition for Post-Conviction Relief. (Id.) The district court dismissed the petition on January 21, 2011. (Id.) Dill did not appeal from that dismissal. (Id.)

On February 14, 2011, Dill filed a successive petition for post-conviction relief asserting that his conviction and sentence violated the United States Constitution or the Idaho Constitution, that material facts existed which were not previously heard and which required vacation of his conviction and sentence in the interest of justice, that Dill was innocent of the offense pursuant to Idaho Code § 19-4902(b) through (f), and that Dill's plea was not made knowingly or voluntarily. (R., pp.2-5.) The district court, finding that Dill's successive petition was untimely and that he had failed to provide a sufficient reason for not asserting the above claims in his original petition for post-conviction relief, issued its Decision and 20 Day Notice of Intent to Dismiss. (R., pp.46-

47.) Dill responded with his Petitioners [sic] Response In Opposition to Respondents [sic] Intent To Dismiss, in which he reiterated his four new grounds for relief. (R., pp.49-63.) The district court dismissed Dill's successive petition on the grounds it had previously stated. (R., pp.64-68.) Dill filed a timely notice of appeal. (R., pp.70-72.)

ISSUE

Has Dill failed to establish an abuse of discretion in the district court's summary dismissal of his untimely successive petition for post-conviction relief?

ARGUMENT

Dill Has Failed To Establish An Abuse Of The District Court's Discretion In Denying His Untimely Successive Petition For Post-Conviction Relief

A. Introduction

The district court, following the procedures set forth in Idaho Code § 19-4906, summarily dismissed Dill's successive petition as being "untimely and/or for lack of any sufficient reason as to why [the issues he raised] were not asserted in the original Petition for Post-Conviction Relief." (R., p.47.) Dill appeals from that dismissal, arguing that he suffered a miscarriage of justice. (Appellant's brief, pp.2-7.) Dill has failed, however, to show any error by the district court in summarily dismissing his successive petition for post-conviction relief. The judgment of the district court should be affirmed.

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. The District Court Properly Dismissed Dill's Successive Post-Conviction Petition

Claims for post-conviction relief are governed by the Uniform Post-Conviction Procedure Act (hereinafter "UPCPA"). I.C. § 19-4901, *et seq.* Under the UPCPA, a district court may summarily dismiss a petition for post-conviction relief when it "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," by indicating its intention to dismiss

and giving the parties an opportunity to respond within 20 days. I.C. § 19-4906(b); see also Workman, 144 Idaho at 523, 164 P.3d at 803. Complying with the requirements set forth in Idaho Code § 19-4906(b), the district court summarily dismissed Dill's successive petition. Dill filed his successive petition for post-conviction relief on February 14, 2011. (R., p.2.) On May 10, 2011, the district court announced its intention to dismiss Dill's successive petition on the grounds that Dill failed to present a sufficient reason as to why the issues he raised were not asserted in his original petition for post-conviction relief as required by Idaho Code § 19-4908, and that the petition was untimely under Idaho Code § 19-4902. (R., pp.46-47.) Twenty-one days later, on May 31, 2011, the district court summarily dismissed Dill's successive petition on the grounds it had previously articulated. (R., pp.64-66.)

1. Dill Failed To Provide A Sufficient Reason For Not Asserting The Claims Raised In His Successive Post-Conviction Petition In His Original Petition

Under the UPCPA, the petitioner has the burden of establishing a sufficient reason justifying the filing of a successive petition. I.C. § 19-4908. The UPCPA provides that:

all grounds for relief available to an applicant ... must be raised in his original, supplemental, or amended application. Any ground ... not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction ... may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted in the original, supplemental, or amended application.

I.C. § 19-4908; see also Stuart v. State, 118 Idaho 932, 933-34, 801 P.2d 1283, 1284-85 (1990) (all legal and factual grounds for relief must be raised in the first petition for post-conviction relief and any grounds for relief not raised are permanently waived if the

grounds were known or should have been known at the time of the first petition); accord Lake v. State, 126 Idaho 333, 336, 882 P.2d 988, 991 (Ct. App. 1994). As explained by the Idaho Court of Appeals, this section prohibits the filing of a second application for post-conviction relief unless the applicant shows sufficient reason why the issues could not have been raised in the prior application. See Hooper v. State, 127 Idaho 945, 947-48, 908 P.2d 1252, 1254-55 (Ct. App. 1995). Where the applicant fails to meet the burden of establishing a sufficient reason for why the grounds for relief asserted in a successive petition for post-conviction relief were not asserted in the original application, his petition must be dismissed. Id.

In his successive petition for post-conviction relief, Dill claimed that:

- (a) The conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- (b) There exists evidence of material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- (c) Subject to the Provisions of Section 19-4902(b) through (f), Idaho Code, that the petitioner is innocent of the offense.
- (d) Plea was not made knowingly or voluntarily.

(R., p.3.) All of these claims were either known or should have been known to Dill when he filed his original petition for post-conviction relief. Throughout his successive petition, accompanying affidavit, and response to the district court's intention to dismiss his successive petition, Dill failed to offer any reason, let alone a sufficient reason, for why he did not present these claims in his original petition. (See R., pp.2-5, 7-28, 49-63.) Because Dill failed to meet his burden of establishing a sufficient reason to file a successive petition under Idaho Code § 19-4908, the district court properly dismissed Dill's successive petition. The judgment of the district court should be affirmed.

2. Dill's Successive Petition Was Untimely

To be timely, the UPCPA 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." I.C. § 19-4902(a). Dill was convicted for rape on April 19, 2004. (R., p.2.) Dill did not appeal from the judgment of conviction. (R., p.3.) On January 12, 2010, almost six years later, Dill filed his original petition for post-conviction relief. (R., p.46.) The petition was dismissed on January 21, 2011. (Id.) On February 14, 2011, Dill filed a successive petition for post-conviction relief. (R., pp.2-5.) Dill's successive petition, filed almost seven years after his initial conviction, is clearly brought outside the limitations period of Idaho Code § 19-4902(a).

Idaho appellate courts have recognized that the limitations period for raising a post-conviction claim may be equitably tolled in circumstances where the petitioner lacks access to the courts or where the petitioner has only recently discovered the factual basis for his claim. See Rhoades v. State, 148 Idaho 247, 250-51, 220 P.3d 1066, 1069-70 (2009); Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007). However, absent a showing by the petitioner that the limitations period should be tolled, the petition remains time barred and must be dismissed. Evensiosky v. State, 136 Idaho 189, 190-91, 30 P.3d 967, 968-69 (2001); Schultz v. State, 151 Idaho 383, ___, 256 P.3d 791, 793 (Ct. App. 2011). Dill has failed to show that the limitations period on his post-conviction proceedings should have been equitably tolled.

In certain circumstances, Idaho appellate courts have also allowed successive petitions for post-conviction relief, filed outside of the limitations period articulated in

Idaho Code § 19-4902(a), to relate back to prior, timely filed petitions for post-conviction relief. See, e.g., Charboneau, 144 Idaho at 904-05, 174 P.3d at 874-75; Hernandez v. State, 133 Idaho 794, 799-800, 992 P.2d 789, 794-95 (Ct. App. 1999). Nothing in these cases, however, excuses the UPCPA's requirement that the original post-conviction proceeding must be commenced within the limitations period, absent a showing that the petition is due equitable tolling. Therefore, even if Dill's successive petition could relate back to his original petition for post-conviction relief, it would still be untimely because the original petition was itself filed more than four and a half years after the limitations period had expired. Under any standard, Dill's successive petition for post-conviction relief is therefore untimely, and the judgment of the district court should be affirmed.

CONCLUSION

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

DATED this 31st day of January, 2012.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of January 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by placing a copy in the United States mail, postage prepaid, addressed to:

MICHAEL SHAUN DILL
IDOC #73589
ISCI
PO Box 14
Boise, ID 83707

A handwritten signature in black ink, appearing to read "Russell J. Spencer", written over a horizontal line.

RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm