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Dill v. State Appellant's Reply Brief Dckt. 38979

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In The Supreme Court Of The
State Of Idaho

Michael S. Dill
petitioner - Appellant,

vs.

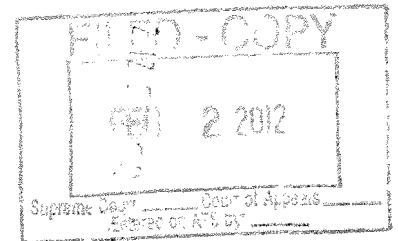
State Of Idaho,
Respondents

No. 38979

ORIGINAL

Petitioner - Appellant Reply
Brief

I. Introduction



On February 14, 2011, Petitioner - Appellant filed a successive petition for post conviction relief, the process through the district court gave its notice and decision to Dismiss, Petitioner responded in Opposition, the district court dismissed Petitioner's - Appellants petition as untimely. Petitioner then gave notice of appeal, and filed his appellants Brief; Respondents later asked for two extensions to file the Respondents Brief, both which were granted. The Respondents filed their Brief on January 31st, 2012 claiming Petitioner - Appellants Petition is untimely and should therefore be dismissed.

II. Reply

First, Petitioner as indicated in his Brief in Support of Petition for Post - Conviction Relief, and the Appellant Brief claims he was on medication the State had induced upon him for a condition he had not been properly diagnosed for, and kept

on the psychotropic drugs for years while incarcerated at the prison. This as petitioners claims amounted to total incoherence of his mind, and complete in-comparability to file anything with the courts, even being off the drugs. Petitioner retained a loss of function regarding his mental capacities. Only

recently has Petitioner been adequately able to function, and process adequately what has been done to him. This form of "Medicating" Petitioner for a condition the State has assumed him to have has had an effect similar to that of a "Laboratory" for a condition the State failed to inquire into or obtain confirmation on, leading to a plea of guilt by "force through an anti-psychotic mind altering Laboratory on the Petitioner, rendering Petitioner unable to make any knowledgeable decision for himself.

Secondly, Petitioner was never afforded an attorney in his first Petition, and the facts presented could not have been known at that time, as Petitioner was still suffering from the effects of the anti-psychotic drugs, and the fact that he requires assistance in his first Petition and said assistance was not available to him upon his release on Parole.

Next, the 9th Circuit's eligibility for equitable tolling falls into the extent on which Petitioner is claiming, which is as follows: (1.) First, a petitioner must show his mental impairment was an "extraordinary circumstance" beyond his control by demonstrating the impairment was so severe that either...

(a.) Petitioner was unable, rationally or factually to personally understand the need to timely file, or

(b.) Petitioner's mental state rendered him unable personally to

Prepare a habeas petition and effectuate its filing. (2.) Second, the Petitioner must show diligence in pursuing the claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances, including reasonable available access to assistance. See *Bills v. Clark*, 628 F.3d 1092, 1099-1100 (9th Cir. 2010), also see *Lo Cascio v. U.S.*, 395 F.3d 51 (CA 2 2005) p 54. The District Court held that Lo Cascio's ineffective assistance of counsel claim based on the Harvey affidavit was time-barred, and therefore denied the motion to amend the Section 2255 petition. [However,] Section 2255 provides that "[F] 1. The year period of limitation shall apply to a motion under this Section. The limitation period shall run from the latest of -- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." [28 U.S.C. § 2254 (f)(4).] Subsection (4) "does not require the maximum feasible diligence, only 'due, or reasonable, diligence.'" *Wims v. United States*, 225 F.3d 186, 190 n.4 (2d Cir. 2000). p 55. [On the present record, the facts as alleged could not have been discovered earlier through due diligence. P 56. Thus, the requirement of Subsection (4) were met as to the discovery of new facts.] Next, Petitioner asserts that with his impaired state of mind the State absolutely could not have established both the elements of mens rea and actus reus which are essential to the criminal conviction. Petitioner has claimed factual innocence, and has showed the Courts, and without objection from the State that his claims obviously have merit. The proceeding in District Court have the entire time been an abuse of process, and the Petitioner now asks the Court for access to justice.

See *Kuhlmann v. Wilson*, 477 U.S., at 454, ... held that this inquiry remained appropriate, and required Federal Courts to entertain successive petitions when a Petitioner supplements a Constitutional claim with a colorable showing of factual innocence. The Miscarriage of justice cause serves as an additional safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty. *Stone v. Powell*, 428 U.S., at 492-493. [...] guaranteeing that the ends of justice will be served in full.

III. Conclusion

Petitioner-Appellant obviously not a candidate for anti-psychotic drugs could not have been able rationally to weigh any choices he had, or knowingly or intelligently enter a plea of guilty, or prepare any form of relief after his sentencing. The actual damage done here by inducing Petitioner on anti-psychotic drugs during and after sentencing amounted to Petitioner's inability to establish facts, prepare papers for filing or knowingly or intelligently understand his options. The Respondents would ask this court to deny "any" relief to Petitioner-Appellant based on his untimely Petition, despite the numerous Constitutional Violations asserted, they ask this court to deny fundamental fairness and access to justice and continue to deprive and hold Petitioner-Appellant in the Department of Corrections his liberty, his freedom, and look the other way so they can keep a conviction and an innocent man in prison. Whereas, Petitioner-Appellant would ask this Court to afford Petitioner the guarantee that justice and fairness are both met. Petitioner asks that an innocent man not be condemned

to Prison any longer, and Grant such Relief as it deems
Necessary and Just.

Dated: 2-16-12

Will S. Dill
Petitioner - Appellant
Pro Se