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Byington v. State Appellant's Reply Brief Dckt. 38995

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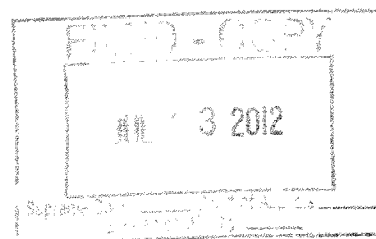
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IN THE SUPREME COURT OF THE STATE OF IDAHO

MICHAEL BYINGTON,)
)
 Petitioner-Appellant,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

NO. 38995

APPELLANT'S
REPLY BRIEF



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

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STATEMENT OF THE CASE

Nature of the Case

On appeal, Mr. Byington asserts that the district court erred when it dismissed a claim he raised via a supplemental petition following an evidentiary hearing on the grounds that it had been waived because it was not contained within his "original" petition for post-conviction relief.

In its Respondent's Brief, the State argues that the district court correctly declined to allow Mr. Byington to amend his petition following the evidentiary hearing in light of the State's continuing objection to any such amendment, and that Mr. Byington's argument that the district court relied on an incorrect legal theory in denying his claim should be rejected because the district court was right for the wrong reason. (Respondent's Brief, pp.7-13.)

This Reply Brief is necessary to respond to the State's argument that the district court reached the right result for the wrong reason.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Byington's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUE

Was the district court's decision to dismiss Mr. Byington's supplemental claim right for the wrong reason?

ARGUMENT

The District Court's Decision, That Mr. Byington's Supplemental Claim Was Waived, Was Not Right For The Wrong Reason

A. Introduction

In its Respondent's Brief, the State asserts,

Byington argues the district court improperly denied his claim for ineffective assistance of counsel for failure to file a motion to suppress on the incorrect theory that this was an impermissible successive petition for post-conviction relief. As discussed above, the district court's decision was consistent with the requirements of I.R.C.P. 15 and I.C. § 19-4908 and, as such, should be affirmed by this Court. See, e.g., McKinney v. State, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999); State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997) (where the lower court reaches the correct result by a different theory, the appellate court will affirm the order on the correct theory).

(Respondent's Brief, p.13.)

The "discuss[ion] above" referred to by the State begins with its argument that because "the issue was not tried by the express or implied consent of the parties, in order to amend his petition to include the new issue, Byington required the permission of the court." (Respondent's Brief, pp.8-10 (citing I.R.C.P. 15).) The State then argues that "[b]ecause the state did not expressly or implicitly consent to trying Byington's unpled claim . . . and the district court never permitted the amendment of Byington's pleading to include this new claim, the district court correctly dismissed Byington's petition for post-conviction relief." (Respondent's Brief, p.12.)

The problem with the State's argument is that the decision as to whether to allow an amendment to a civil pleading is discretionary with the district court, which, for the reasons that follow, forecloses the possibility of this Court upholding the district court's erroneous decision as being right for the wrong reason.

B. The District Court Decision Was Not Right For The Wrong Reason

I.R.C.P. 15(b), in relevant part, provides,

. . . If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

I.R.C.P. 15(b). With respect to decisions on amendments sought pursuant to I.R.C.P. 15(b), this Court has held, "While amendments to pleadings should be liberally allowed, the ruling of a district court will not be overturned absent a showing of abuse of discretion." *Switzer v. Dean*, 118 Idaho 568, 574-75 (1990).

In this case, the district court declined to consider Mr. Byington's new claim because of an erroneous belief that it was "waived" by virtue of not having been included in his "original Petition for Post Conviction Relief." (R., p.65.) The district court did not recognize that it had the discretion, under I.R.C.P. 15(b), to permit the new claim to be included and considered, and as such, it abused that discretion. *Perry v. Magic Valley Regional Medical Center*, 134 Idaho 46, 51 (2000) ("To determine whether a trial court has abused its discretion, this Court considers whether it correctly perceived the issue as discretionary, whether it acted within the boundaries of its discretion and consistently with applicable legal standards, and whether it reached its decision by an exercise of reason.").

With respect to the State's "right for the wrong reason" argument, Mr. Byington asserts that this Court should decline the State's invitation to substitute its own discretion for that of the district court because the district court never took the

opportunity to exercise its discretion. The State points to no case law that supports its contention that an appellate court may make a discretionary decision not made by the district court in order to sustain a decision made by the district court on an incorrect legal theory.¹ A number of cases hold that an appellate court is not to substitute its own discretionary decision for that of the trial court. See *Nelson v. Nelson*, 144 Idaho 710, 717 (2007) (in reviewing child custody determinations, “[e]ach case requires this Court to determine whether the magistrate abused his or her discretion, not whether this Court would have made the same decision”); *State v. Talley*, 114 Idaho 898, 899 (Ct. App. 1988) (“On review we will not substitute our judgment for that of the sentencing authority, but will modify a lawful sentence only if an abuse of discretion appears.”) (citations omitted); *Jensen v. Westberg*, 115 Idaho 1021, 1025 (Ct. App. 1988) (“On questions of credibility, we will not substitute our judgment for that of the trial court.”) (citation omitted).

Even if this Court was inclined to substitute its own discretionary decision on whether to allow Mr. Byington to add a claim to his post-conviction petition, this Court does not have the information necessary to make such a decision, including whether the State, as the objecting party, has “satisf[ied] the [C]ourt that the admission of such evidence would prejudice the party in maintaining the party’s . . . defense upon the merits” and whether this Court would grant a continuance, rather than decline to allow an amendedment, to enable the State to “meet such evidence.” Those are decisions


¹ The State appears to be attempting to have this Court decide whether it would, in its discretion, have allowed Mr. Byington to amend his post-conviction petition following the evidentiary hearing, a decision that was not made by the district court, and then rely upon such a decision to uphold the district court’s actual decision to dismiss the claim on the erroneous grounds that it was “waived.”

best made by the district court, which can inquire as to the specific prejudice and determine whether granting a continuance will alleviate any concerns expressed by the State.

CONCLUSION

For the reasons set forth herein and in his Appellant's Brief, Mr. Byington respectfully requests that this Court vacate the portion of the district court's Order Denying Petition for Post Conviction relief dismissing his suppression-related claim of ineffective assistance of counsel without considering it on its merits, and remand this matter to the district court for a consideration of the claim on its merits. In the alternative, Mr. Byington respectfully requests that this Court remand this matter to the district court for it to rule on whether to allow Mr. Byington's petition to be supplemented with the new claim raised via his Supplemental Petition for Post Conviction Relief.

DATED this 23rd day of July, 2012.



SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of July, 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:

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