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Hadden v. State Respondent's Brief Dckt. 39589

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

TRACI N. HADDEN)
)
 Petitioner-Appellant,) NO. 39589
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF LINCOLN**

**HONORABLE JOHN K. BUTLER
District Judge**

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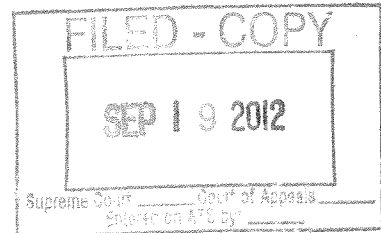


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STATEMENT OF THE CASE

Nature Of The Case

Traci Hadden appeals from the dismissal of her post-conviction petition.

Statement Of The Facts And Course Of The Proceedings

Hadden pled guilty to attempted murder and grand theft. The district court sentenced her to concurrent sentences of 15 years with ten determinate and 14 years with four determinate, respectively. She did not appeal. (R., vol. I, pp. 36, 103-04.)

In a separate case a jury found her guilty of grand theft. The court sentenced her and she did appeal from the judgment. (R., vol. I, pp. 102-03; see also Docket No. 37523.¹)

Hadden initiated the instant case by filing a petition and, after appointment of counsel, an amended petition for post-conviction relief related to both her criminal cases. (R., vol. I, pp. 20-34, 87-101.) Among her claims were assertions her respective trial counsel were ineffective for: (a) not moving for a continuance of the attempted murder sentencing because Hadden informed him that she had been given a prescription for “Effexor^[2]” which “greatly diminished” her ability to “understand and participate” in the sentencing (R., vol. I, p. 91-92); (b) not objecting to an “erroneous statement” in Dr. Worst’s report in the

¹ The state cites the record from the prior appeal for the convenience of the Court only. Although judicial notice of that appeal file would be appropriate it is not necessary for understanding the issues in this case, and is therefore not requested.

² The drug is variously spelled “Effexor” or “Efexor” in Hadden’s pleadings.

attempted murder sentencing (R., vol. I, p. 92); and (c) not asking for a continuance in the grand theft trial so she could consider the state's plea offer (R., vol. I, pp. 90-91).

The district court filed a notice of intent to dismiss the amended petition. (R., vol. I, pp. 102-18.) The court concluded that Hadden had not shown that a motion to continue the sentencing because she was on a prescription drug would have been granted because she had not "shown how the effect of her medication prevented her from participating ... or that she was prejudiced." (R., vol. I, pp. 114-15.) It concluded her claim of ineffective assistance of counsel for failing to object to a sentencing evaluation on the basis that Dr. Worst mischaracterized a statement by Hadden failed because she did not show "any basis" for an objection. (R., vol. I, p. 115.) Finally, the court concluded that any motion to continue the trial to consider a plea offer would not have been granted because "mere desire to consider a plea offer is not good cause to continue a jury trial" and the start of trial was not exclusive of consideration of the plea agreement, so there were several days during the trial that Hadden had to consider the offer. (R., vol. I, p. 111.)

In response to the notice of intent to dismiss, Hadden requested the court take judicial notice of three transcripts. (R., vol. I, pp. 137-217.) Hadden also submitted affidavits, including her own. (R., vol. II, pp. 232-48.) In her affidavit Hadden stated she was using the prescription drug "Efexor" and told her counsel it made her "lethargic and foggy in [her] thinking" prior to sentencing in the attempted murder case. (R., vol. II, p. 247.) She stated she told her counsel that

a characterization in Dr. Worst's report of a statement she had made was wrong. (R., vol. II, p. 247.) She also stated she requested her counsel to continue the grand theft trial so she could consider a plea offer. (R., vol. II, pp. 241-42.) The district court summarily dismissed the three claims relevant to this appeal. (R., vol. II, pp. 250-71.) The district court concluded, respectively, that Hadden had failed to present evidence to show that any request for continuance of the sentencing would have been granted (R., vol. II, pp. 267-68), showed neither deficient performance nor prejudice in the lack of an objection to Dr. Worst's report (R., vol. II, pp. 268-69), and that any motion to continue the trial to consider the plea offer would not have been granted (R., vol. II, pp. 261-62).

After Hadden's opportunity for an evidentiary hearing on undismissed claims, the court entered judgment dismissing the petition. (R., vol. II, pp. 277-78.) Hadden filed a timely notice of appeal. (R., vol. II, pp. 280-83.)

ISSUE

Hadden states the issue on appeal as:

Did the district court err when it summarily dismissed Ms. Hadden's post-conviction claims?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Hadden failed to demonstrate on appeal that she presented admissible evidence showing a material issue of fact requiring an evidentiary hearing on any of the three claims she asserts on appeal?

ARGUMENT

Hadden Has Failed To Demonstrate That She Presented Admissible Evidence Showing A Material Issue Of Fact Requiring An Evidentiary Hearing On The Three Claims She Raises On Appeal

A. Introduction

Hadden challenges the summary dismissal of three of her claims of ineffective assistance of counsel in her post-conviction petition. (Appellant's brief, pp. 5-17.) Her claims of error fail because she did not support the claims with admissible evidence showing a *prima facie* claim of ineffective assistance of counsel.

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

C. Hadden Failed To Demonstrate That The Motions Or Objections She Wished Her Attorney Made Had Merit, And Therefore Failed To Show That Her Counsel Was Ineffective For Failing To Make Those Motions Or Objections

"To withstand summary dismissal, a post-conviction applicant must present evidence establishing a *prima facie* case as to each element of the

claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal “if the applicant’s evidence raises no genuine issue of material fact” as to each element of the petitioner’s claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297.

In order to establish a prima facie claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). An attorney’s performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel’s conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). To establish prejudice, a defendant must show a reasonable probability that, but for counsel’s deficient performance, the outcome of the proceeding would have been different. Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988); Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

When a defendant claims his counsel was ineffective for failing to file a motion, “the district court may consider the probability of success of the motion in question in determining whether the attorney’s inactivity constituted incompetent

performance.” Wolf v. State, 152 Idaho 64, ___, 266 P.3d 1169, 1172 (Ct. App. 2011) (citing Boman v. State, 129 Idaho 520, 526, 927 P.2d 910, 916 (Ct. App.1996)). “Where the alleged deficiency is counsel's failure to file a motion, a conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the Strickland test.” Id. at ___, 266 P.3d at 1172-73.

Review of Hadden’s factual claims, even accepting them as true, shows that the motions or objections she claims counsel should have made would not have been granted. Her claims of ineffective assistance of counsel for failing to make these meritless motions or objections were thus properly dismissed by the district court.

1. Hadden Failed To Present Any Evidence Showing That A Motion To Continue Her Sentencing Hearing Because She Was Using A Prescription Drug Would Have Been Granted

A defendant is competent to proceed to sentencing if she has the “present ability to consult with [her] lawyer with a reasonable degree of rational understanding” and has a “rational, as well as factual, understanding of the proceedings against [her].” State v. Hanson, 152 Idaho 314, ___, 271 P.3d 712, 723 (2012) (quotations omitted). Hadden has failed to show that her factual allegation that “Efexor” made her “very lethargic and foggy in [her] thinking” (R., vol. II, p. 247) rendered her incompetent to proceed. Nor has she cited to any legal standard for a continuance that would have been met by such a factual claim. (Appellant’s brief, pp. 8-9 (citing no legal standard for granting a motion for a continuance of a sentencing hearing).) Hadden has failed to show error in

the district court's conclusion that this allegation fails to state a claim of ineffective assistance of counsel because no motion to continue on the basis asserted by Hadden would have been granted and no prejudice from the lack of delay has been alleged.

2. Hadden Failed To Present Evidence That An Objection To Dr. Worst's Report Would Have Been Sustained

It is well settled that a sentencing court may consider a broad range of information when fashioning an appropriate sentence. State v. Moore, 93 Idaho 14, 17, 454 P.2d 51, 54 (1969); State v. Dunn, 134 Idaho 165, 172, 997 P.2d 626, 633 (Ct. App. 2000); State v. Morgan, 109 Idaho 1040, 1043, 712 P.2d 741, 744 (Ct. App. 1985). A defendant is denied due process when the sentencing court relies upon information that is materially untrue or when the court makes materially false assumptions of fact. Dunn, 134 Idaho at 172, 997 P.2d at 633. The appellate court presumes that the sentencing court is able to ascertain the relevancy and reliability of the broad range of information and material which is presented to it during the sentencing process. State v. Pierce, 100 Idaho 57, 58, 593 P.2d 392, 393 (1979); State v. Campbell, 123 Idaho 922, 926, 854 P.2d 265, 269 (Ct. App. 1993).

Hadden alleged she told Dr. Worst she "had no feelings regarding whether Mr. Hadden lived or died." (R., vol. II, p. 247.) Although she intended this to mean she did not "feel strongly about it one way or the other," Dr. Worst interpreted her as "saying Mr. Hadden's death would not have displeased [her]." (Id.) Hadden has failed to show that an objection to how Dr. Worst interpreted

Hadden's comment would have resulted in the exclusion of any evidence at sentencing.

Even if counsel would have merely pointed out Hadden's claim that Dr. Worst misinterpreted her comment, the district court correctly concluded that such would not have had any effect on the sentencing. In the district court's view "whether his death would not have displeased her or whether she had no feeling whether Mr. Hadden lived or died is a distinction without a difference." (R., vol. II, pp. 268-69.) Because no objection to Dr. Worst's allegedly erroneous interpretation of Hadden's comments would have been sustained Hadden did not present a *prima facie* claim of ineffective assistance of counsel for failing to make such an objection.

3. Hadden Failed To Present Evidence That A Motion To Continue The Trial Would Have Been Granted

The decision to grant or deny a continuance rests within the sound discretion of the trial court. State v. Nunez, 133 Idaho 13, 21, 981 P.2d 738, 746 (1999); State v. Hudson, 129 Idaho 478, 481, 927 P.2d 451, 454 (Ct. App. 1996). That discretion is not abused unless a substantial right of the defendant is prejudiced by the lack of a continuance. Nunez, 133 Idaho at 21, 981 P.2d at 746 (citing State v. Laws, 94 Idaho 200, 203, 485 P.2d 144, 147 (1971)). "Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons." State v. Carman, 114 Idaho 791, 793, 760 P.2d

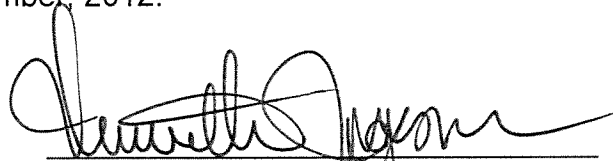
1207 (Ct. App. 1988) (quoted in State v. Cagle, 126 Idaho 794, 797, 891 P.2d 1054, 1057 (Ct. App. 1995)).

Hadden's claim that her counsel should have moved to continue the trial so she would have additional time to consider the state's plea offer fails because such a motion would not have been granted. (R., vol. II, pp. 261-62.) Because additional time to consider the plea offer was not a "compelling reason" to postpone the trial, and because Hadden failed to show she did not in fact have enough time to consider the offer (by showing that the start of trial and further consideration of the offer were mutually exclusive), her claim of ineffective assistance of counsel was properly denied.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of dismissal.

DATED this 19th day of September, 2012.



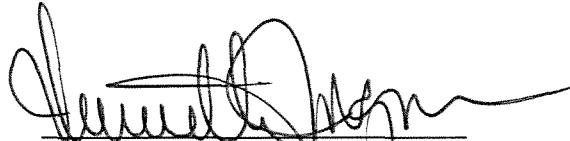
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of September 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



KENNETH K. JORGENSEN

KKJ/pm