

11-20-2012

## Hadden v. State Appellant's Brief 2 Dckt. 39589

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TRACI HADDEN,	)	
	)	
Petitioner-Appellant,	)	NO. 39589
	)	
v.	)	
	)	
STATE OF IDAHO,	)	APPELLANT'S
	)	REPLY BRIEF
Respondent.	)	

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BRIEF OF APPELLANT

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

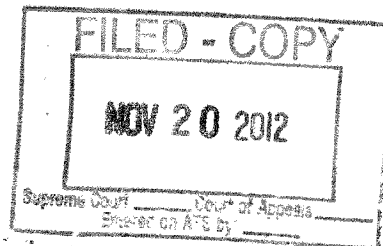
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## STATEMENT OF THE CASE

### Nature of the Case

In her Appellant's Brief, Ms. Hadden argued that the district court erred when it summarily dismissed three of the claims set forth in her petition for post-conviction relief alleging ineffective assistance of counsel in two separate criminal cases. One of the claims was that her attorney in her attempted murder case was ineffective for failing to request a continuance when she told him, prior to the sentencing hearing, that she was under the influence of a psychotropic medication that caused her to feel "drugged" and "very lethargic and foggy in [her] thinking."

In its Respondent's Brief, the State responds to each of the three claims. (Respondent's Brief, pp.7-10.) With respect to her claim concerning her attorney's failure to seek a continuance of her sentencing hearing until she was no longer under the influence of a psychotropic medication, the State argues, *inter alia*, that Ms. Hadden "has failed to show that her factual allegation . . . rendered her incompetent to proceed" and that she has not "cited to any legal standard for a continuance that would have been met by such a factual claim." (Respondent's Brief, p.7.)

This Reply Brief is necessary to respond to the State's arguments concerning the sentencing hearing claim. While Ms. Hadden maintains that this Court should grant her relief with respect to the other two claims, she need not respond to the State's arguments concerning those claims, and instead relies on the arguments set forth in her Appellant's Brief.

### Statement of the Facts and Course of Proceedings

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

### ISSUE

Did Ms. Hadden's claim that her attorney was ineffective for failing to move for a continuance of her sentencing hearing upon being informed that she was under the influence of a psychotropic drug raise a genuine issue of material fact, necessitating an evidentiary hearing?

## ARGUMENT

### Ms. Hadden's Claim That Her Attorney Was Ineffective For Failing To Move For A Continuance Of Her Sentencing Hearing Upon Being Informed That She Was Under The Influence Of A Psychotropic Drug Raised A Genuine Issue Of Material Fact, Necessitating An Evidentiary Hearing

In responding to Ms. Hadden's claim that she received ineffective assistance of counsel when her attorney, knowing that she was under the influence of a psychotropic drug at the time of her sentencing hearing, failed to move for a continuance of the hearing until she was competent to proceed, the State submits the following argument:

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.

(Respondent's Brief, pp.7-8 (brackets in original).)

The State's argument fails because it stems from a fundamental misunderstanding of the standard to be employed by a district court in determining whether to order summary dismissal of a post-conviction claim. It further fails because Ms. Hadden did establish that, by law, she could not have been sentenced when she was incompetent to proceed, therefore rendering the State's argument concerning a failure to cite to "any legal standard for a continuance" in such a circumstance unpersuasive. Finally, the State's claim that the district court's conclusion that it would



not have granted a continuance of the sentencing hearing demonstrates that Ms. Hadden failed to make a *prima facie* showing to satisfy prejudice prong set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), also fails.

Ms. Hadden notes that the standard to be applied when deciding whether summary dismissal of a post-conviction claim is appropriate was correctly set forth in her Appellant's Brief as follows: "on review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court determines whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and liberally construes the facts and reasonable inferences in favor of the non-moving party." (Appellant's Brief, p.6 (citing *Charboneau v. State*, 144 Idaho 900, 903 (2007) (citations omitted)).)

In light of this standard, Ms. Hadden notes that she submitted uncontested evidence that, at the time of her sentencing hearing, she was under the influence of a psychotropic drug prescribed to her following a recent "mental breakdown," which caused her to feel "very lethargic and foggy in [her] thinking," as a result of which she was "not thinking very clearly" during her sentencing hearing. She also established that she told her lawyer about the effects of the drug prior to the hearing, and her lawyer told her "not to worry about it" because "this was a sentencing hearing and it didn't make a difference." (R., p.247.) Furthermore, she presented passages from the sentencing hearing showing that she made no attempt to correct a statement erroneously attributed to her in the psychological evaluation and sat silently while the district court cited to that misstatement while pronouncing sentence, and argued that it could be reasonably inferred from her failure to object to the misstatement that she was not able to

participate meaningfully in her sentencing hearing as a result of her drugged condition. (Appellant's Brief, pp.9-11.) These uncontroverted facts and inferences, when taken in the light most favorable to Ms. Hadden, the non-moving party, established a genuine issue of material fact such that she was entitled to an evidentiary hearing on the claim.

With respect to the State's argument that Ms. Hadden's claim should fail because she did not cite "to any legal standard for a continuance that would have been met by such a factual claim," she notes that she cited to both Idaho Code § 18-210, which provides, "No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, *sentenced* or punished for the commission of an offense so long as such incapacity endures," I.C. § 18-210 (emphasis added), and *State v. Lovelace*, 140 Idaho 53 (2003), in support of the proposition that conducting a sentencing hearing with a defendant who is incapable of understanding and meaningfully participating in such a hearing is improper. (Appellant's Brief, p.11.)

With respect to the State's argument that Ms. Hadden failed to establish that she was prejudiced by any deficient performance because the district court indicated that it would not have granted a continuance on the facts alleged,<sup>1</sup> she notes that this is not

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<sup>1</sup> What the district court actually concluded was that "[t]o prevail it would be the burden of the defendant to prove that if the motion had been pursued it would have been granted." (R., p.267 (citing *Schoger v. State*, 148 Idaho 622 (2010)).)

The actual standard announced in *Schoger* was whether the petitioner has shown "a *reasonable probability* that but for her attorney's deficient performance the outcome of the proceeding would have been different." *Schoger*, 148 Idaho at 624 (emphasis added). The holding in *Schoger* is consistent with the United States Supreme Court's holding in *Strickland* that, in order to prevail on the prejudice prong, the petitioner "must show that there is a *reasonable probability* that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694 (emphasis added). The *Strickland* court also explained that

the standard to apply when assessing *Strickland's* prejudice prong. Rather, the Court in *Strickland* explained that a trial judge's testimony as to what he or she would have done absent the deficient performance "is irrelevant to the prejudice inquiry." *Strickland*, 466 U.S. at 700. Therefore, the State's claim that the district court concluded that it would not have granted a continuance even if it had known of Ms. Hadden's drugged condition, is not relevant to a consideration of the prejudice prong and must fail.

### CONCLUSION

For the reasons set forth herein and in her Appellant's Brief, Ms. Hadden respectfully requests that this Court vacate the district court's judgment of dismissal as to the three claims contained in her Appellant's Brief, and remand this matter to the district court for an evidentiary hearing on those claims.

DATED this 20<sup>th</sup> day of November, 2012.

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SPENCER J. HAHN  
Deputy State Appellate Public Defender

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a "defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case." *Id.* at 693.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20<sup>th</sup> day of November, 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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PWCC  
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POCATELLO ID 83205

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E-MAILED BRIEF

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SJH/eas