

7-20-2012

State v. Hyde Respondent's Brief Dckt. 39245

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STEVEN LEE HYDE,)	
)	
Petitioner-Appellant,)	NO. 39245
)	
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

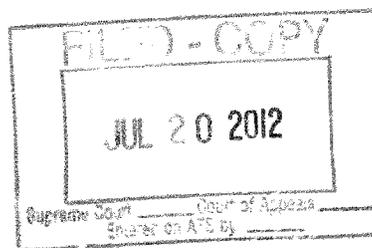
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STATEMENT OF THE CASE

Nature of the Case

Steven Lee Hyde appeals, *pro se*, from the district court's orders denying his motion for leave to file a successive petition for post-conviction relief and denying his motion for reconsideration.

Statement of Facts and Course of Proceedings

In 1993, Hyde was convicted of eight counts of robbery. (R., p.6.) The district court imposed concurrent unified sentences of life, with 25 years fixed, and the judgment and sentences were affirmed on appeal. (R., pp.6, 10.) See also State v. Hyde, 127 Idaho 140, 898 P.2d 71 (Ct. App. 1995).

"On July 29, 1996, Hyde filed Petition for Post-Conviction Relief in Case No. SP-96-1392. The Petition was dismissed as untimely on October 1, 1996. Hyde appealed, but the appeal was ultimately dismissed in 1997." (R., p.11.)

In December 2002, Hyde filed a Rule 35 motion for correction of his sentence, alleging the sentence was illegal. (R., p.6.) The district court denied the motion, and the Idaho Court of Appeals affirmed. (R., pp.6-8, 11.)

"On August 13, 2003, Hyde sought to file a second Petition for Post-Conviction Relief. In that Petition, he alleged ... that his first Petition was wrongly dismissed as untimely when, in fact, it was timely filed." (R., p.11.) The district court denied Hyde's request to file a second petition "for the reason that the court lacked jurisdiction due to the significant amount of time that had passed, and [Hyde] had failed to provide a sufficient basis, factual or legal, to warrant permitting the filing of the petition." (R., p.11.)

On August 1, 2011, Hyde “submitted” a motion for leave to file a successive petition for post-conviction relief and memorandum in support thereof, “again seeking permission to reopen or file anew his 1996 Petition for Post-Conviction Relief.” (R., pp.11, 19-50.) In an order entered in the criminal case, the district court denied Hyde’s motion, reasoning:

It has now been over seventeen years since Hyde’s initial sentencing, and nearly seven years since the Remittitur was issued in his most recent appeal. Therefore, under the facts presented, this Court no longer has jurisdiction pursuant to I.C. § 19-4902 et. seq. to permit the filing of the submitted Petition for Post-Conviction Relief.

(R., pp.11-12.) Hyde thereafter moved for reconsideration (R., pp.62-67), which the district court denied (R., pp.86-88). Hyde timely appealed. (R., pp.68-72; see also R., pp.84-85 (Idaho Supreme Court order deeming notice of appeal timely filed from order denying motion for leave to file successive petition).)

ISSUE

Hyde states the issue on appeal as:

Whether the district court should have allowed Hyde to file a successive post-conviction, since the first post-conviction was wrongly dismissed, because the wrongful dismissal was a state created error, that tolled the time limits.

(Appellant's brief, p.vii.)

The state rephrases the issue on appeal as:

Has Hyde failed to show any basis for reversal of the district court's orders denying his motion for leave to file a successive petition for post-conviction relief and denying his motion for reconsideration?

ARGUMENT

Hyde Has Failed To Show Any Basis For Reversal Of The District Court's Orders Denying His Motion For Leave To File A Successive Post-Conviction Petition And Denying His Motion For Reconsideration

A. Introduction

Hyde challenges the denial of his motion for leave for to file a successive petition for post-conviction relief and the denial of his subsequently filed motion for reconsideration. (Appellant's brief, pp.1-10.) To the extent Hyde's motion for leave to file a successive post-conviction petition was merely a motion to reopen his original post-conviction petition, which was litigated to finality in 1997, the motion was akin to an I.R.C.P. 60(b) motion and was properly denied for lack of jurisdiction. To the extent the motion and attachments thereto can themselves be construed as a successive post-conviction petition, the district court had jurisdiction to entertain the petition; however, the court correctly concluded, in its order denying Hyde's motion for reconsideration, that the petition was barred because it was not timely filed. Hyde has failed to show any basis for reversal of the district court's orders.

B. Standard Of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004).

The application of a statute of limitation to an action under a given set of facts is also a question of law subject to free review on appeal. Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009); State v. O'Neill, 118

Idaho 244, 245, 796 P.2d 121, 122 (1990); Cochran v. State, 133 Idaho 205, 206, 984 P.2d 128, 129 (Ct. App. 1999).

The decision of a trial court to grant or deny a motion for reconsideration is reviewed on appeal for an abuse of discretion. Commercial Ventures, Inc. v. Lea Family Trust, 145 Idaho 208, 212, 177 P.3d 955, 959 (2008); Straub v. Smith, 145 Idaho 65, 71, 175 P.3d 754, 760 (2007); Jordan v. Beeks, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001).

C. The District Court Had No Jurisdiction To Entertain What Was Effectively A Rule 60(b) Motion To Reopen Hyde's Original Post-Conviction Petition

Approximately 14 years after his first post-conviction petition was dismissed, Hyde initiated the instant case by submitting a "Motion For The Courts [sic] Leave To File A Successive Petition For Post-Conviction Relief Pursuant To I.C. § 19-4908." (R., pp.11, 19-20.) Hyde did not actually include with his motion any proposed successive petition. Rather, in a memorandum submitted in support of his motion, Hyde argued that his original petition was improperly dismissed as untimely (R., pp.21-27), and he asked the district court to "reinstate [his] original post-conviction and, the states [sic] answer to that petition, then allow [Hyde] 21 days to file a written [sic] reply to that answer" (R., p.28). The district court denied the motion for lack of jurisdiction. (R., pp.10-12.) The district court's ruling was correct because, to the extent the motion was simply a request by Hyde to reopen or reconsider the summary dismissal of his original post-conviction petition, it was akin to an I.R.C.P. 60(b) motion, which, under the facts of this case, the district court had no jurisdiction to grant.

“It is well established that an action under the Uniform Post-Conviction Procedure Act is civil in nature and that the Idaho Rules of Civil Procedure are applicable in such a proceeding.” Ross v. State, 141 Idaho 670, 671, 115 P.3d 761, 762 (Ct. App. 2005) (citing State v. Goodrich, 104 Idaho 469, 660 P.2d 934 (1983); I.C.R. 57(b)). A motion to reconsider the summary dismissal of a post-conviction petition should be treated as a motion to alter or amend a judgment pursuant to I.R.C.P. 59(e), but only if the motion was filed within 14 days of the entry of the dismissal order. Ross, 141 Idaho at 671-72, 115 P.3d at 762-63. Rule 60(b), I.R.C.P., also provides a means by which a post-conviction petitioner may obtain relief from an order summarily dismissing a post-conviction petition, but only upon the grounds provided in the rule. Id. at 672, 115 P.3d at 763. A motion for reconsideration that does not assert some grounds for relief recognized under an existing rule, or which is not filed within the time required by such rule does not invoke the jurisdiction of the trial court. First Bank & Trust of Idaho v. Parker Brothers, Inc., 112 Idaho 30, 32, 730 P.2d 950, 952 (1986); see also State v. Jakoski, 139 Idaho 352, 354-355, 70 P.3d 711, 713-714 (2003) (citations omitted) (“a court’s jurisdiction to amend or set aside the judgment in a case does not continue forever” and, absent a statute or rule extending its jurisdiction, the trial court’s jurisdiction to amend or set aside a judgment expires once the judgment becomes final).

Rule 60(b), I.R.C.P., provides a means for an aggrieved party to obtain relief from a “final judgment, order, or proceeding’ directly from the trial court without resorting to an appeal.” Ross, 141 Idaho at 672, 115 P.3d at 763

(quoting Hoopes v. Bagley, 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990)). The rule requires a showing of good cause and specifies particular grounds upon which relief may be granted, including: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation or misconduct; (4) a void judgment; (5) a satisfied judgment; or (6) "any other reason justifying relief." I.R.C.P. 60(b); Ross, 141 Idaho at 672, 115 P.3d at 763. There is no express time limit for filing a motion for relief from judgment on the grounds set forth in I.R.C.P. 60(b)(4)-(6); however, such motions must "be made within a reasonable time." I.R.C.P. 60(b). In addition, a motion brought pursuant to I.R.C.P. 60(b)(6) "cannot be a disguised substitute for a timely appeal." Hoopes, 117 Idaho at 1093, 793 P.2d at 1265.

Hyde's motion sought relief from the summary dismissal of his original post-conviction petition based on his claims that (1) he did not receive the statutorily required notice of the basis for dismissal of the petition, and (2) the petition was wrongly dismissed as untimely when, in fact, it was timely filed. (R., pp.21-27.) Construing Hyde's motion as an I.R.C.P. 60(b) motion, the only ground upon which Hyde's asserted bases for relief could conceivably fall under is the catchall ground for relief, "any other reason justifying relief from the operation of the judgment." I.R.C.P. 60(b)(6). A review of the record and the applicable law shows, however, that Hyde's motion to reinstate his original post-conviction petition on the basis that the petition was incorrectly dismissed was really just a disguised substitute for a timely appeal and, as such, did not invoke the jurisdiction of the trial court.

As explained by the Court of Appeals in Hoopes v. Bagley, *supra*:

[R]ule 60(b)(6) has clearly defined limits. The party making a Rule 60(b)(6) motion must demonstrate unique and compelling circumstances justifying relief. See Puphal v. Puphal, 105 Idaho 302, 669 P.2d 191 (1983). The motion cannot be a disguised substitute for a timely appeal. *Id.* We have previously stated that where an appeal from the judgment is the proper remedy, “Rule 60(b)(6) may not be used as an end-run around the time limits of I.A.R. 14.” Stauffer, *supra*, 112 Idaho at 142, 730 P.2d at 1062.

Here, Hoopes plainly tried to use Rule 60(b)(6) as a substitute for a timely motion to amend the judgment and a timely appeal. Motions to amend a judgment must be made within fourteen days of the judgment’s entry. I.R.C.P. 59(e). A party has forty-two days to appeal from a final judgment. I.A.R. 14. In this case Hoopes waited two months before challenging the award of attorney fees. He has identified no cogent reason for the delay. He simply argues that the amount of attorney fee award was in error. However, this alleged error could have been remedied either by a motion to amend or by an appeal. Consequently, Rule 60(b)(6) was not an appropriate vehicle for relief in this case, and the motion was properly denied.

Hoopes, 117 Idaho at 1093-94, 793 P.2d at 1265-66, quoted in Ross, 141 Idaho at 672, 115 P.3d at 763.

Applying the reasoning of Hoopes, the Court of Appeals in Ross rejected Ross’ appellate claim that the district court abused its discretion by denying his Rule 60(b) motion to reconsider the summary dismissal of his amended post-conviction petition, explaining:

As in Hoopes, Ross did not timely seek relief under Rule 59(e) nor did he timely appeal from the February 26 order of dismissal. Both were remedial avenues that were directly available to him. His arguments under Rule 60(b) in his motion for reconsideration did not include claims of mistake, excusable neglect, newly discovered evidence, fraud, misconduct, or satisfaction of judgment. He failed to provide any new information in support of his request for reconsideration that would justify relief pursuant to Rule 60(b)(6), but instead maintained that the district court was wrong in dismissing the amended application for post-

conviction relief, and he essentially asked the district court to reverse itself and rule in Ross's favor on the state's motion to dismiss. This was an inappropriate use of Rule 60(b) as a disguised substitute for an appeal that could have been timely filed on April 3, 2003, the date he submitted his motion for reconsideration.

Ross, 141 Idaho at 672, 115 P.3d at 763.

In this case, as in Hoopes and Ross, it does not appear from the record that Hyde ever filed a Rule 59(e) motion for reconsideration of the order dismissing his original post-conviction petition. Hyde did file an appeal from the dismissal of his post-conviction petition but, for reasons that do not appear in the record, that appeal was dismissed in 1997. (R., p.11.) Like the motion at issue in Ross, Hyde's motion to reopen his original post-conviction petition, filed 14 years after the petition was finally dismissed, "did not include claims of mistake, excusable neglect, newly discovered evidence, fraud, misconduct, or satisfaction of judgment," nor was it accompanied by any new information that would justify relief pursuant to Rule 60(b)(6). Ross, 141 Idaho at 672, 115 P.3d at 763. Rather, like Ross, Hyde simply maintained that the district court was wrong in dismissing his petition for post-conviction relief, and he essentially asked the district court to reverse itself and reinstate the petition. (R., pp.21-28.) Furthermore, despite having clearly been aware since the entry of the dismissal order of the alleged defects in that order, Hyde did not identify in his memorandum submitted in support of his motion to reinstate his post-conviction petition any reason for the delay of approximately 14 years in raising the issues to the district court. Thus, far from demonstrating "unique and compelling circumstances" justifying relief, it appears that Hyde, like Hoopes and Ross,

simply attempted to use his motion as a substitute for a timely appeal. Because this was not an appropriate use of Rule 60(b), the district court did not have jurisdiction to grant relief. Hyde has failed to establish any basis for reversal.

D. Alternatively, The District Court's Orders Denying Hyde's Motion For Leave To File A Successive Post-Conviction Petition And Denying Reconsideration Should Be Affirmed Because Any Successive Petition Was Untimely

Idaho Code § 19-4902(a) 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.” In the case of successive petitions, the Idaho Supreme Court has “recognized that rigid application of I.C. § 19-4902 would preclude courts from considering ‘claims which simply are not known to the defendant within the time limit, yet raise important due process issues.’” Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009) (quoting Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007)). Because I.C. § 19-4908 contemplates successive petitions to assert a claim where that claim “for sufficient reason was not asserted or was inadequately raised,” claims that “raise important due process issues” that were “not known to the defendant” within the one-year limitation period of I.C. § 19-4902(a) can be brought within a reasonable time of their discovery. Rhoades, 148 Idaho at 250-51, 220 P.3d at 1069-70. Absent a showing by the petitioner that the limitation period should be tolled, the failure to timely file a petition for post-conviction relief – either within the one-year limitation period of I.C. § 19-

4902 or within a reasonable time of the discovery of new claims – is a basis for dismissal of the petition. Rhoades, 148 Idaho 247, 220 P.3d 1066; Evensiosky v. State, 136 Idaho 189, 30 P.3d 967 (2001); Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009).

As set forth in Section C, *supra*, Hyde's motion for leave to file a successive post-conviction petition was akin to an I.R.C.P. 60(b) motion to reinstate his original post-conviction petition, which the district court had no jurisdiction to grant; it was not itself a successive petition. To the extent the motion and attachments thereto can themselves be construed as a successive post-conviction petition, the district court had jurisdiction to entertain the petition; however, the court correctly concluded, in its order denying Hyde's motion for reconsideration, that any petition was barred because it was not timely filed. (R., p.87.)

Hyde's motion to file a successive petition sought to reassert the very same claims that Hyde asserted in his original post-conviction petition. (See R., p.28 (requesting the court to "reinstate" his original petition).) As such, there can be no question that Hyde was aware of the claims therein no later than July 1996, the date his original post-conviction petition was filed. (See R., p.39.) Hyde apparently concedes this point but claims the statute of limitation should be tolled because his original petition was improperly dismissed due to what he characterizes as a "state created error." (Appellant's brief, pp. vii, 5-9; see also R., pp.24, 26-27, 63-65.) Contrary to Hyde's assertions, however, the erroneous dismissal of a post-conviction petition, while certainly a ground for relief in a

timely filed appeal from the order of dismissal, is not a cognizable basis for equitable tolling. See Schultz v. State, 151 Idaho 383, 386, 256 P.3d 791, 794 (Ct. App. 2011) (citations omitted) (Idaho courts recognize equitable tolling only where petitioner was incarcerated in out-of-state facility on in-state conviction without legal representation or access to Idaho legal materials; where mental disease and/or psychotropic medication rendered petitioner incompetent and prevented petitioner from earlier pursuing challenges to his conviction; and, in limited circumstances, where petitioner was unaware of factual basis underlying post-conviction claim). Because Hyde failed to file his successive petition either within the one-year limitation period of I.C. § 19-4902 or within a reasonable time of the discovery of his claims, and otherwise failed to demonstrate any basis for equitable tolling, the district court correctly ruled that the petition was untimely. Hyde has failed to show any basis for reversal of the district court's orders denying his motion for leave to file a successive petition and denying his motion for reconsideration.

CONCLUSION

The state respectfully requests that this Court affirm the district court's orders denying Hyde's motion for leave to file a successive petition for post-conviction relief and denying Hyde's motion for reconsideration.

DATED this 20th day of July 2012.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of July 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

STEVEN LEE HYDE
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LF/pm