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Gillard v. State Appellant's Reply Brief Dckt. 39814

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ONEISA MAY GILLARD,)	
)	NO. 39814
Petitioner-Appellant,)	
v.)	ADA COUNTY NO. CR 2011-22028
)	
STATE OF IDAHO,)	APPELLANT'S
)	REPLY BRIEF
Respondent.)	
_____)	

REPLY 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

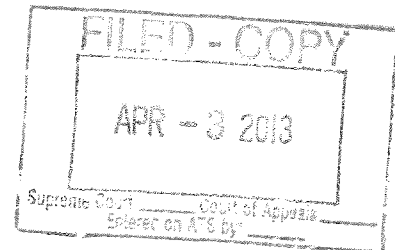
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Y-005

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STATEMENT OF THE CASE

Nature of the Case

Oneisa May Gillard appeals from the district court's Order Dismissing Petition for Post Conviction Relief. She asserts that the district court erred in summarily dismissing her post-conviction petition as there was a genuine issue of material fact as to whether her guilty plea was knowingly, intelligently, and voluntarily entered into. This Reply Brief is necessary to clarify that there exists more evidence that Ms. Gillard did not knowingly, intelligently, and voluntarily enter her guilty plea, than the State acknowledges.

Statement of the Facts and Course of Proceedings

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

ISSUE

Did the district court err by summarily dismissing Ms. Gillard's petition for post-conviction relief as there was a genuine issue of material fact as to whether Ms. Gillard knowingly, intelligently, and voluntarily entered her guilty plea?

ARGUMENT

The District Court Erred By Summarily Dismissing Ms. Gillard's Petition For Post-Conviction Relief As There Was A Genuine Issue Of Material Fact As To Whether Ms. Gillard Knowingly, Intelligently, And Voluntarily Entered Her Guilty Plea

A. Introduction

Ms. Gillard asserts that there was a genuine issue of material fact as to whether she understood the consequences of her guilty plea, at the time she entered her guilty plea; thus, the district court erred in summarily dismissing this claim. Ms. Gillard's argument in full is contained in the Appellant's Brief and will not be repeated in detail herein. However, Ms. Gillard reiterates herein that there was more evidence supporting her claim that she did not enter a knowing, intelligent, and voluntary guilty plea than the State has acknowledged in its Respondent's Brief.

B. There Was A Genuine Issue Of Material Fact As To Whether Ms. Gillard Entered Her Plea Knowingly, Intelligently, And Voluntarily; Thus, The District Court Erred In Summarily Dismissing Ms. Gillard's Petition On This Claim

The evidence reviewed by the district court raised a genuine issue of material fact as to whether or not Ms. Gillard's plea was knowingly, intelligently, and voluntarily entered into. In its Notice of Intent to Dismiss, the district court stated that "when [Ms. Gillard] filled out her guilty plea form she stated she had not taken any medications or drugs that would affect her ability to make a reasoned and informed decision." (R., p.26.) However, additional information in the Guilty Plea Advisory form indicates

that Ms. Gillard did not fully understand what was transpiring in her case and the consequences of her guilty plea.¹

Ms. Gillard indicated that she was currently under the care of a mental health professional having been diagnosed as a paranoid schizophrenic, and indicated that she was taking prescribed medications. (Plea Advisory, p.3.) This fact was acknowledged by the State in its Respondent's Brief. (Respondent's Brief, p.9.) However, as noted in the Appellant's Brief (*see* Appellant's Brief, pp.7-8), additional evidence exists demonstrating that Ms. Gillard's plea was not knowingly, intelligently, and voluntarily entered into.

Although Ms. Gillard indicated that she had not taking any medications, alcohol, or drugs within 24 hours prior to her guilty plea that would affect her ability to make a reasoned and informed decision, she circled the answer, "Yes," to the question, "Is there any other reason that you would be unable to make a reasoned and informed decision in this case?" (Plea Advisory, p.3.) Ms. Gillard circled the answer, "No," to the question, "Are there any motions or other requests for relief that you believe should still be filed in this case?"; however, Ms. Gillard answered the follow-up question, "If so, what motions or requests?" by stating "Mental illness & under the influence." (Plea Advisory, p.5.) Finally, to the question, "Have you had any trouble answering any of the questions in this form which you could not resolve by discussion with your attorney?" Ms. Gillard answered, "Yes." (Plea Advisory, p.7.)

¹ This Court granted, in part, Ms. Gillard's Motion to Augment and to Suspend the Briefing Schedule and Statement in Support Thereof, specifically ordering the Guilty Plea Advisory form Ms. Gillard filled out and signed to be augmented into the record. See Order, filed 10/26/12. The Guilty Plea Advisory form will be cited as "Plea Advisory" in this Appellant's Brief.

Additionally, Ms. Gillard's Presentence Report² and the documents attached thereto, provide more evidence of her mental illness and its affect on her guilty plea. The PSI writer noted that Ms. Gillard admitted a history of mental illness, including paranoid schizophrenia. (PSI, pp.6-7, 9.) The PSI writer spoke with Robbie Danhauer, Ms. Gillard's aunt, who verified that Ms. Gillard has schizophrenia. (PSI, pp.6-7.) Most telling, the PSI writer noted that Ms. Gillard expressed confusion about her plea agreement and "I found her thoughts and stories to be scattered and confusing. She has a difficult time answering direct questions." (PSI, p.11.) A mental health evaluator diagnosed Ms. Gillard with "Schizophrenia, Paranoid Type" and "Schizoaffective Disorder." (Mental Health Assessment, p.5.) The evaluator noted, "Oneisa states that she was diagnosed with Paranoid Schizophrenia at the age of 23. Her presentation during this interview and stated symptoms would certainly support this diagnosis." *Id.*

While the State cited to information supporting a conclusion that Ms. Gillard's plea was knowingly, intelligently, and voluntarily entered into (see Respondent's Brief, pp.9-10), this evidence is simply not conclusive, in light of the evidence noted above supporting the opposite conclusion. As a genuine issue of material fact exists as to whether Ms. Gillard's plea was knowingly, intelligently, and voluntarily entered into, the district court erred in summarily dismissing this claim.

² The Presentence Investigation Report (including attached Mental Health Assessment), has been augmented into the record and will be cited as "PSI" herein. See Order, filed 10/26/12.

CONCLUSION

Ms. Gillard respectfully requests that this Court vacate the district court's Order Dismissing Petition for Post Conviction Relief and remand her case to the district court with instructions that an evidentiary hearing be held on her claim that her guilty plea was not knowingly, intelligently, and voluntarily entered into.

DATED this 2nd day of April, 2013.



JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of April, 2013, 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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ADA COUNTY DISTRICT COURT
EMAILED BRIEF

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