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

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IN THE SUPREME COURT OF THE STATE OF IDAHO

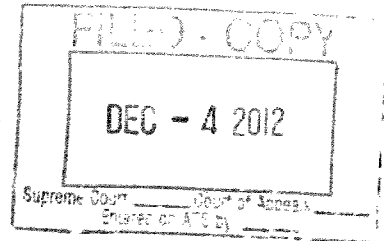
ONEISA MAY GILLARD, )  
 )  
 Petitioner-Appellant, )  
 )  
 v. )  
 )  
 STATE OF IDAHO, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

NO. 39814

COPY

APPELLANT'S 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

\_\_\_\_\_  
HONORABLE DARLA S. WILLIAMSON  
District Judge  
\_\_\_\_\_

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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.

### Statement of the Facts and Course of Proceedings

Oneisa Gillard filed a timely Petition and Affidavit for Post Conviction Relief, stemming from her guilty plea to grand theft. (R., pp.4-10.) Although she stated the grounds for her petition as "ineffective coun[s]el" and "excessive sentencing," Ms. Gillard claimed the following:

I was heavily sadated and did not know what I was doing. I wanted mental health court and my lawyer did not fight for it. I am now concisely aware of what Im doing. Im on the proper medication. I needed a competency test and a hearing (sic).

(R., pp.5-6.) Ms. Gillard provided an affidavit in support of her petition claiming,

I was not on my proper medication and I was under the influence of drugs. I was also with a so called friend. We were walking and seen a vehicle running I said Sam it's cold. He said lets take the vehicle. I said whose driving he said you. We drove away got pulled over in the college area. The owner got his vehicle back (sic).

(R., p.9.) Ms. Gillard requested that counsel be appointed and the district court granted her request. (R., pp.17-20, 22.)

The district court, "having considered the application and the record," entered a Notice of Intent to Dismiss and Order. (R., pp.23-27.) The district court identified five potential claims raised by Ms. Gillard and gave notice of its intent to dismiss each of

them. (R., pp.26-27.) First, the court stated that to the extent Ms. Gillard claimed that she was intoxicated during the offense, Idaho law provides that intoxication is not a defense. (R., p.26.) Next, the district court found that,

To the extent Gillard may be claiming that she was heavily sedated at the time of her plea and sentencing, there is nothing in the record to support this claim. In fact when she 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. The court therefore gives notice of intent to dismiss this claim.

(R., p.26.) The district court next announced its intention to dismiss Ms. Gillard's claim that she needed a competency evaluation finding, "There is no indication in the record that Gillard lacked the capacity to understand the proceedings against her or to assist in her own defense." (R., p.26.) The district court further found that Ms. Gillard's claim that her attorney did not fight for her to get into Mental Health Court was disproven by the record and noted its intent to dismiss this claim. (R., p.26.) Finally, the district court found that Ms. Gillard did not provide any facts to support her claim that her sentence was excessive, and noted its intent to dismiss this claim. (R., p.26.)

Counsel for Ms. Gillard filed a Memorandum in Response to Notice of Intent to Dismiss and Order purportedly based upon "the court records, transcripts and reports associated with the underlying criminal matter on file with the Court." (R., pp.42-46.) Ms. Gillard argued only that she raised a genuine issue of material fact as to whether her guilty plea was knowing, intelligent, and voluntary, specifically arguing that she did not understand the potential consequences of her guilty plea due to the fact that she was suffering from mental illness and that she was not receiving the proper medication to treat her illness at the time of her entry of plea. (R., pp.44-45.) The State filed a

Respondent's Reply and Motion for Summary Judgment arguing that summary judgment was appropriate.<sup>1</sup> (R., pp.47-52.)

The district court entered an Order Dismissing Petition for Post Conviction Relief. (R., pp.53-54.) The court stated that “[t]he court deals with people with mental illness on a regular basis” and “At the time of her presentation in court at her guilty plea there was no indication that she was not fit to proceed.” (R., p.54.) The court found that Ms. Gillard had failed to provide facts that would indicate a reasonable probability that the result would have been different, that she had “provided no information that she is innocent of the charge and would have insisted on going to trial,”<sup>2</sup> and that she had “not shown that her counsel’s performance was deficient and fell below an objective standard of reasonableness.”<sup>3</sup> (R., p.54.) Ms. Gillard filed a timely Notice of Appeal.<sup>4</sup> (R., pp.55-58.)

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<sup>1</sup> Because the district court did not rely upon any arguments made by the State in summarily dismissing Ms. Gillard’s petition, no further mention of the State’s reply is necessary.

<sup>2</sup> Citing to *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

<sup>3</sup> Citing to *State v. Porter*, 130 Idaho 772, 791 (1997) *cert denied* 523 U.S. 1126, and *Matthews v. State*, 130 Idaho 39, 42 (1997).

<sup>4</sup> The district court entered a Final Judgment after Ms. Gillard filed her Notice of Appeal. Pursuant to I.A.R. 17(e)(2), Ms. Gillard’s appeal was deemed timely filed when the district court entered the Final Judgment.

## 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.<sup>5</sup>

#### B. Standards Of Review

A post-conviction petition initiates a proceeding that is civil, rather than criminal, in nature, and like the plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). However, unlike a plaintiff in other civil cases, the original post-conviction petition must allege more than merely “a short and plain statement of the claim.” *Id.* at 443-444. The application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.* In addition, the post-conviction petition must set forth with specificity the legal grounds upon which the application is based. *Ridgley v. State*, 148 Idaho 671, 675 (2010).

A defendant may challenge the validity of a guilty plea on constitutional grounds through a petition for post-conviction relief, provided that defendant had not previously

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<sup>5</sup> Ms. Gillard does not claim an error in the district court's dismissing the other issues raised in her original, *pro se* petition.

moved to withdraw the guilty plea. *Mendiola v. State*, 150 Idaho 345, 348-49 (Ct. App. 2010) (citing *Ricca v. State*, 124 Idaho 894 (Ct. App. 1993).)

A district court may summarily dismiss a post-conviction petition only where the petition and evidence supporting the petition fail to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. "A material fact has 'some logical connection with the consequential facts[.]" *Black's Law Dictionary*, 991 (7th Ed.1999), and therefore is determined by its relationship to the legal theories presented by the parties." *Id.* On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the appellate Court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896 (Ct.App.1993).

The United States Supreme Court has defined the standard for whether there exists a genuine issue of material fact as whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved in favor of either party." *Id.* at 250. If a genuine factual issue is presented, an evidentiary hearing must be conducted. *Yakovac*, 145 Idaho at 444. The underlying facts alleged by the petitioner "must be regarded as true" for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party,

and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009).

C. 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.<sup>6</sup>

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.) Although Ms. Gillard indicated that she had not taking any medications, alcohol, or drugs within the previous 24 hours 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.) Furthermore, Ms. Gillard circled the answer, “No,” to the question, “Are there any

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<sup>6</sup> 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.

motions or other requests for relief that you believe should still be filed in this case?" (Plea Advisory, p.5.) 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.)

Additionally, Ms. Gillard's Presentence Report<sup>7</sup> and the documents attached thereto, provide more evidence of her mental illness. 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.*

The Idaho Supreme Court has held,

Whether a plea is voluntary and understood entails inquiry into three areas: (1) whether the defendant's plea was voluntary in the sense that he

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See Order, filed 10/26/12. The Guilty Plea Advisory form will be cited as "Plea Advisory" in this Appellant's Brief.

<sup>7</sup> 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.

understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived his rights to a jury trial, to confront his accusers, and to refrain from incriminating himself; and (3) whether the defendant understood the consequences of pleading guilty.

*State v. Colyer*, 98 Idaho 32, 34 (1976). The evidence presented by Ms. Gillard raised a genuine issue of material fact as to whether or not she understood the consequences of pleading guilty. In dismissing Ms. Gillard's petition on this issue, the district court stated, "[t]he court deals with people with mental illness on a regular basis" and "At the time of her presentation in court at her guilty plea there was no indication that she was not fit to proceed." (R., p.54.) However, the district court's own memory of Ms. Gillard's demeanor during the Entry of Plea hearing is not in evidence and was erroneously considered by the district court in dismissing this claim, and should not be considered by this Court in this appeal. See *Matthews v. State*, 122 Idaho 801 (1992); see also *Taylor v. McNichols*, 149 Idaho 826 (2010); I.R.E. 201. Thus, the district court erred in dismissing this claim.<sup>8</sup>


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<sup>8</sup> The district court also found that Ms. Gillard had failed to demonstrate that she would have taken her case to trial and, thus, she failed to show prejudice, relying upon *Hill v. Lockhart*, 474 U.S. 52 (1985). (R., p.54.) While the *Hill* standard is relevant to claims that a defendant entered a guilty plea based upon the deficient performance of trial counsel, the *Hill* standard is not relevant to the present case as Ms. Gillard is not asserting that her counsel was ineffective. Ms. Gillard claims that her plea was not knowingly, intelligently, and voluntarily entered into due to her inability to understand the consequences of her plea, based upon her mental illness, not based upon any deficient performance on the part of her counsel.

CONCLUSION

Ms. Gillard respectfully requests that this Court vacate the district court's Order Dismissing Petition for Post Conviction Relief and to 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 4<sup>th</sup> day of December, 2012.

  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4<sup>th</sup> day of December, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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