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Begley v. State Appellant's Reply Brief Dckt. 39892

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID S. BEGLEY,)	
)	
Petitioner-Appellant,)	NO. 39892
)	
v.)	CANYON COUNTY NO. CV 2011-1607
)	
STATE OF IDAHO,)	REPLY BRIEF
)	
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

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

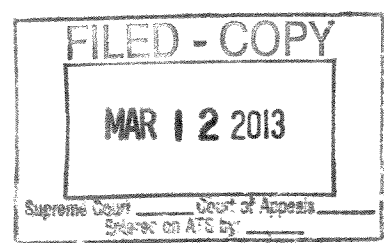
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STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Mr. Begley argued that the district court erred when it summarily dismissed his post-conviction claim that his *Alford* plea was not knowingly, intelligently, and voluntarily made because the record of his plea hearing, at which he maintained his innocence, did not contain a strong factual basis for the charge to which he pled guilty, and that the district court erred when it summarily dismissed another of his post-conviction claims without providing notice of the reasons for the dismissal.

In its Respondent's Brief, the State argues that the record did contain a strong factual basis to support Mr. Begley's *Alford* plea despite his strong protestations of innocence. With respect to the second claim, the State argues that the district court did give notice, and even assuming it did not, any error in summarily dismissing the claim without notice was harmless because he could have responded to the district court's notice of intent to dismiss other claims.

This Reply Brief is necessary to respond to the State's argument that there is a strong factual basis in the record to support Mr. Begley's *Alford* plea in the face of his continuing assertion of innocence. The State's arguments with respect to the second claim need not be responded to, and are adequately addressed in the Appellant's Brief.

Statement of the Facts and Course of Proceedings

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

ISSUE

Was there a strong factual basis to support Mr. Begley's *Alford* plea?

ARGUMENT

No Strong Factual Basis Exists To Support Mr. Begley's *Alford* Plea

In opposing Mr. Begley's claim that the record was devoid of the strong factual basis necessary to support an *Alford* plea entered concurrently with an assertion of innocence, the State argues,

The district court had the benefit of having presided over motion hearings in the original lewd conduct case in addition to having the information as provided by the prosecutor about the existence of additional victims and victims' polygraph examinations as well as Begley's failed polygraph examination in addressing a victim not charged in the original lewd conduct case. All of these factors played a part in the amendment of the charges. That background information gave the district court a strong factual basis for the entry of a guilty plea to injury to a child

. . .^[1]

The record supports the district court's conclusion that "after reviewing all the records in this case, this Court finds that Begley entered his Alford Plea voluntarily, knowingly, and intelligently." (R., p.84.)

(Respondent's Brief, pp.10-12 (emphasis added).)

The State's argument is problematic for a number of reasons. First, it contains no citation to the portions of the post-conviction record that purportedly support it. See I.A.R. 35(b)(6) ("The argument [in the Respondent's Brief] shall contain the contentions of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon."). Second, the State fails to explain why passing a polygraph with respect to the initial charges constitutes a strong factual basis to support the charge to which he pled or why failing a polygraph as to "a victim not charged in the original lewd conduct case"


¹ The material omitted via this ellipse is the colloquy already quoted in Appellant's Brief. (Appellant's Brief, pp.10-11.)

assists in establishing a strong factual basis for the charge to which he entered an *Alford* plea not involving such a victim.² Finally, contrary to the State's claim that "[t]he district court had the benefit of presiding over motions hearings in the original lewd conduct case," the district court could not have relied on its own memory to reach any conclusion regarding whether a strong factual basis existed in the record. See *Matthews v. State*, 122 Idaho 801, 808 (1992) (judge who presided over original trial cannot take judicial notice of testimony he recalls in reaching decision in post-conviction proceeding).

CONCLUSION

For the reasons set forth herein, and in his Appellant's Brief, Mr. Begley respectfully requests that this Court vacate the district court's judgment summarily dismissing his amended petition for post-conviction relief as to the two claims raised on appeal, and remand this matter for an evidentiary hearing on both claims.

DATED this 12th day of March, 2013.



SPENCER J. HAHN
Deputy State Appellate Public Defender

² All three victims (T.C., A.H., and M.Z.) named in the sole charge in the Information (Information (appended to PSI)), for which he entered an *Alford* plea were the same as the three victims named in the original charging instrument. (Indictment (appended to PSI).)

CERTIFICATE OF MAILING

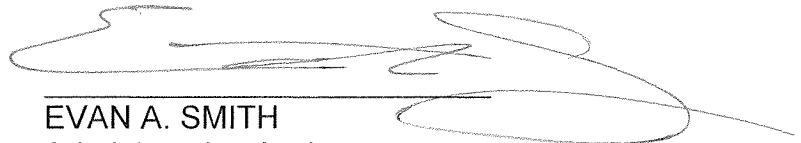
I HEREBY CERTIFY that on this 12th day of March, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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