10-12-2012

Begley v. State Appellant's Brief Dckt. 39892

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID S. BEGLEY,	)	
	)	
Petitioner-Appellant,	)	DOCKET NO. 39892
	)	
v.	)	
	)	
STATE OF IDAHO,	)	APPELLANT'S BRIEF
	)	
Respondent.	)	
	)	

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

David Begley appeals from the district court's order summarily dismissing his amended petition for post-conviction relief. On appeal, he asserts that the district court erred when it summarily dismissed his 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. He also asserts that the district court erred when it summarily dismissed another of his claims without providing notice of the reasons for dismissal.

Statement of the Facts and Course of Proceedings

Following an unsuccessful direct appeal, Mr. Begley filed a *pro se* verified petition for post-conviction relief, supported by an affidavit, along with a motion for appointment of counsel. (R., pp.2-15.) The State filed a boilerplate answer, and counsel was appointed. (R., pp.26-31.) Appointed counsel then filed a verified amended petition for post-conviction relief containing twelve claims, supported by an affidavit of Mr. Begley.[1] (R., pp.36-49.) The State then filed a boilerplate answer to the amended petition. (R., pp.49-51.)

Appointed counsel filed a motion for summary disposition as to one of the twelve claims raised in his amended petition, namely, the assertion that Mr. Begley's "guilty plea was not knowingly and voluntarily made because the court failed to determine a

[1] The amended petition did not incorporate the original petition by reference; therefore, any claims contained in the original petition but not in the amended petition will not be addressed on appeal.

factual basis for his *Alford* plea after [he] continued to maintain his innocence." (R., pp.52-53.) This motion was followed by a brief in support, containing argument and citation to numerous cases supporting Mr. Begley's position. (R., pp.60-75.) The State filed a Memorandum in Opposition to Motion for Summary Disposition. (Memorandum in Opposition to Motion for Summary Disposition[2].)

The district court then issued an order denying Mr. Begley's motion for partial summary disposition, and providing notice of its intent to summarily dismiss Mr. Begley's amended petition. (R., pp.79-85.) Mr. Begley filed a response, in which he pointed out, *inter alia*, that the district court's order and notice of intent to dismiss did not address his claim that a strong factual basis must be found before an *Alford* plea can be considered to have been made knowingly, intelligently, and voluntarily. (R., pp.87-90.) The district court then issued an Order of Dismissal, in which it rejected Mr. Begley's claim that it had not considered his strong factual basis argument, explaining, "[t]he Court finds that in its previous order referenced above, the Court addressed all issues raised by Petitioner." (R., p.92.) Mr. Begley then filed a Notice of Appeal timely from the district court's Order of Dismissal. (R., p.95.) The district court later issued a judgment summarily dismissing Mr. Begley's petition. (Judgment & Decree (augmentation).)

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[2] A file-stamped copy of this memorandum is attached to a Motion to Augment filed on October 3, 2012.

ISSUES

1. Did the district court err when it summarily dismissed Mr. Begley's 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?

2. Did the district court err when it summarily dismissed another claim raised in Mr. Begley's amended petition for post-conviction relief without providing notice of the reasons for dismissal?

ARGUMENT

I.

The District Court Erred When It Summarily Dismissed Mr. Begley's 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 Pleaded Guilty

Mr. Begley asserts that the district court erred when it summarily dismissed a 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 pleaded guilty. Because there was, at the very least, a genuine issue of material fact as to this claim, Mr. Begley was entitled to an evidentiary hearing on it.

When deciding whether to accept a defendant's guilty plea, Idaho law generally does not require that the trial court establish a factual basis before accepting such a plea. *State v. Coffin*, 104 Idaho 543, 545 (1983). One exception to this general rule is for cases in which "a plea of guilty is coupled with an assertion of innocence . . . ." *State v. Hoffman*, 108 Idaho 720, 722 (Ct. App. 1985) In such circumstances, the district court may only accept a guilty plea "if there is a strong factual basis for it." *Id.* (citing *Sparrow v. State*, 102 Idaho 60 (1981), and *State v. Howell*, 104 Idaho 393 (Ct. App. 1983)). Such a factual basis need not rise to the level of proof beyond a reasonable doubt or require a "mini-trial of the case." *Id.* The purpose of the inquiry "is to assure that the defendant's plea is made knowingly, intelligently and voluntarily." *Id.* (citing *North Carolina v. Alford*, 400 U.S. 25 (1970)).

In *Alford*, the United States Supreme Court considered whether the United States Constitution permitted a defendant to plead guilty while maintaining his factual innocence. Alford was charged with first-degree murder, a crime for which the presumptive punishment was death. *Alford*, 400 U.S. at 26-27. The prosecutor and Alford entered into a plea agreement, under the terms of which Alford agreed to plead guilty to the lesser, non-capital charge of second-degree murder. Before Alford entered his plea, the trial court received testimony from "a police officer who summarized the State's case" and two other witnesses. The testimony of these witnesses "indicated that shortly before the killing Alford took his gun from his house, stated his intention to kill the victim, and returned home with the declaration that he had carried out the killing." Alford then testified, denying that he had committed the murder, but stating "that he was pleading guilty because he faced the threat of the death penalty if he did not do so." The trial court accepted his guilty plea, and sentenced Alford to thirty years in prison, the maximum allowed by law. *Id.* at 28-29. Alford then sought habeas corpus relief in federal court, arguing that his plea was constitutionally-invalid because he only pleaded guilty to second-degree murder to avoid the near-certain imposition of a death sentence if he had been convicted of first-degree murder. *Id.* at 30.

In considering his claim, the United States Supreme Court noted that, but for the fact that he had asserted his innocence while pleading guilty, his case would have been routine. The Court noted, "[o]rdinarily, a judgment of conviction resting on a plea of guilty is justified by the defendant's admission that he committed the crime charged against him and his consent that judgment be entered without a trial of any kind. The plea usually subsumes both elements, and justifiably so, even though there is no

separate, express admission by the defendant that he committed the particular acts claimed to constitute the crime charged in the indictment." *Id.* at 32 (citations omitted).

Discussing *nolo contendere* pleas, the Court noted, "[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling to unable to admit his participation in the acts constituting the crime." The Court then explained that it could perceive of no "material difference" between a *nolo contendere* plea, which is constitutionally-valid, "and a plea containing a protestation of innocence when, as in the instant case, a defendant intelligently concludes that his interests require entry of a guilty plea and *the record before the judge contains strong evidence of actual guilt*." *Id.* at 37 (emphasis added). In reaching its conclusion that his guilty plea was constitutionally-valid, the Court noted, "[w]hen his plea is viewed *in light of the evidence against him*, which substantially negated his claim of innocence and which further provided a means by which the judge could test whether the plea was being intelligently entered [citation omitted] its validity cannot be seriously questioned." *Id.* at 37-38 (emphasis added). The Court then concluded, "*[i]n view of the strong factual basis for the plea demonstrated by the State*[3] and Alford's clearly expressed desire to enter it despite his professed belief in his innocence, we hold that the judge did not commit constitutional error in accepting it." *Id.* (emphasis added).

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[3] As noted above, the strong evidence of actual guilt before the Court consisted of testimony from three witnesses, including testimony "that shortly before the killing Alford took his gun from his house, stated his intention to kill the victim, and returned home with the declaration that he had carried out the killing." *Id.* at 28.

Thus, *Alford* stands for the proposition that a strategically-entered guilty plea, coupled with continued assertions of innocence, can represent a knowing, intelligent, and voluntary guilty plea, but only when it is accompanied by a record containing a "strong factual basis" for the crime. Absent a strong factual basis, such a guilty plea is constitutionally-invalid. Decisions from a number of state appellate courts, including several in Idaho, have concluded as much in adopting the reasoning of *Alford* in their states.

The validity of *Alford* pleas in Idaho was first recognized by the Idaho Supreme Court in *Sparrow v. State*, 102 Idaho 60 (1981), when it considered whether a guilty plea offered by a defendant who maintained that he had not acted with the requisite criminal intent was constitutionally-valid. In concluding that such a guilty plea can be valid, the Court, citing *Alford*, explained, "[a]s long as there is a strong factual basis for the plea, and the defendant understands the charges against him, a voluntary plea of guilty may be accepted by the court despite a continuing claim by the defendant that he is innocent." *Sparrow*, 102 Idaho at 61. In Sparrow's case, "the prosecutor recited the factual basis for the charge and defendant's counsel agreed with the facts as stated," thereby providing the strong factual basis necessary to support such a plea. *Id.* at 62; *see also Schoger v. State*, 148 Idaho 622, 628 (2010) ("The Supreme Court [in *Alford*] found such a plea to be constitutionally permissible so long as the charge is supported by a strong factual basis.")

The Minnesota Supreme Court has explained "that careful scrutiny of the factual basis" for an *Alford* plea is necessary "because of the inherent conflict in pleading guilty while maintaining innocence. An *Alford* plea is not supported by the defendant's

admission of guilt, and is actually contradicted by his claim of innocence; precedent therefore requires a strong factual basis for an *Alford* plea." *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007) (citing *Alford*, 400 U.S. at 37-38). The requirement for an underlying factual basis is distinct from the requirement that a defendant "agree[ ] that evidence the State is likely to offer at trial is sufficient to convict." Together, these two requirements "provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty, notwithstanding his claims of innocence." *Id.* at 649 (emphasis in original) (citation omitted).

The Mississippi Supreme Court has summarized the law as follows:

> In *Reynolds v. State*, 521 So.2d 914, 917 (Miss. 1988), relying on *Alford* [citation omitted], we held that "admission of guilt is not a constitutional requisite of an enforceable plea."
>
> We recognize, however, that a factual basis is an "essential part of the constitutionally valid and enforceable decision to plead guilty." *Reynolds*, 521 So.2d at 915. This factual basis cannot simply be implied from the fact that the defendant entered a plea of guilty. *United States v. Briggs*, 920 F.2d 287, 293 (5th Cir. 1991). Rather, there must be an evidentiary foundation in the record which is "sufficiently specific to allow the court to determine that the defendant's conduct was within the ambit of that defined as criminal." *United States v. Oberski*, 734 F.2d 1030, 1031 (5th Cir. 1984).

Lott v. State, 597 So.2d 627, 628 (Miss. 1992). The Mississippi Court of Appeals applied *Lott* to a case in which the factual basis underlying the *Alford* plea consisted simply of a prosecutor's statements as to what he believed the testimony of witnesses would have been at trial, with the Court concluding that such statements "were sufficiently specific to show that [the petitioner's] conduct was 'within the amount of that

defined as criminal.' *Lott*, 597 So.2d at 632." *Cole v. State*, 918 So.2d 890, 894 (Miss. Ct. App. 2006).

In Mr. Begley's case, the transcript of his plea hearing[4] is devoid of a factual basis for his guilty plea, let alone the strong factual basis required under *Alford* and its progeny. The guilty plea hearing consists of a discussion of the terms of the plea agreement, specifically, that the State agreed to dismiss the original charging instrument, in which Mr. Begley was charged with lewd conduct, in exchange for Mr. Begley's agreement to enter an *Alford* plea to a charge of felony injury to a child.[5] (Tr., p.1, L.18 – p.6, L.20.) The district court then placed Mr. Begley under oath, and explained the maximum and minimum penalties for the new charge, explained the rights that he was waiving by pleading guilty, and inquired about a guilty plea advisory form that Mr. Begley apparently executed.[6] (Tr., p.7, L.5 – p.12, L.10.)

Mr. Begley was then advised that the district court was not bound to impose a particular sentence, that the court would be ordering a pre-sentence investigation, including a psychosexual evaluation, that he was not waiving his right to remain silent, except as it applied to his plea of guilty to felony injury to a child, that he was waiving

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[4] The transcript of his plea hearing was made a part of the record in the post-conviction case by order of the district court. (R., pp.57-58.) It will be cited to in this brief as "Tr." A version of the transcript paginated differently is attached to the State's Memorandum in Opposition to Motion for Summary Disposition; all citations to the plea hearing transcript will be to the version prepared for the post-conviction case, which bears a district court file stamp indicating that it was filed at 11:40 a.m. on June 16, 2011, in CV-2011-1607.

[5] The reason behind the reduced charge and the agreement to allow an *Alford* plea appears to be because Mr. Begley "took a polygraph test . . . and he passed the polygraph with reference to the other [lewd conduct] charge." (Tr., p.5, L.8 – p.6, L.20.)

[6] The guilty plea advisory form was not a part of the record in the post-conviction case. (*See Generally* R.)

any procedural defects, and that he was reserving the right to appeal from any sentence imposed. (Tr., p.12, L.11 – p.15, L.7.) The attorneys and the court then discussed difficulties that Mr. Begley might have in treatment based on his having passed a polygraph as to the lewd conduct allegations, and the State explained that he was unlikely to face a probation violation for failing to disclose behavior in treatment for which he had passed a polygraph. (Tr., p.15, L.8 – p.20, L.14.) The district court then inquired as to Mr. Begley's mental health, asked whether he had ingested any alcohol or controlled substances recently, asked whether he needed additional time to consult with his attorney, and explained that, with respect to an *Alford* plea, "the court will treat this matter as if there was an injury to children." (Tr., p.20, L.15 – p.21, L.21.)

The district court then engaged in the following colloquy:

> THE COURT: The Information that's been filed in this case charges the following offenses [sic]: That the Defendant David Begley, on or between the 1st day of January 2007, through May 27, 2007, in the County of Canyon, State of Idaho, did under circumstances likely to produce great bodily harm or death to a child under 18 years of age, specifically T.C., date of birth [redacted] and/or A.H., date of birth [redacted] and/or M.Z., date of birth August 4, 1997, unlawfully and willfully caused or permitted the person or health of the child to be injured while having care or custody of said child.
>
> To that offense do you plead guilty?
>
> [Defense Counsel:] Judge, we will enter an Alford plea to that charge.
>
> THE COURT: Well, Mr. Begley, do you plead guilty to this offense on the basis that you feel the state has sufficient evidence that there's a likelihood they could prove their case at trial?
>
> THE DEFENDANT: No, Your Honor, I don't think they can prove it but –
>
> THE COURT: Well, here's the situation. My understanding of the case in Alford versus North Carolina, which is a case decided by the United States Supreme Court, that essentially stands for the proposition that a person can plead guilty to a crime even though they don't believe

they're guilty but on the basis that they understand that the state's evidence is strong enough that they very well may lose the case at a jury trial.

THE DEFENDANT: Yeah.

THE COURT: So I guess what I'm asking you is – I mean, you've talked to your attorney. And what I heard your attorney say earlier today is that the risk of losing on three charges of lewd and lascivious conduct against children is something that you've weighed in your consideration.

Is that fair to say?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So is that why you're then pleading guilty to this new charge of injury to children?

THE DEFENDANT: If you're asking the reason why I'm pleading, it is because of the cost of the jury trial, one. Financially we can't afford it. Two, it's a flip of a coin; their word versus mine. My attorney has advised me of that; that it can go either way, and so I do understand. But that is the reason why I've chosen to follow this path is just financially, and I want it be over with and done. It's been drug out for a very long time.

THE COURT: Okay. But when you say or use the phrase, it's just a flip of the coin as to what could happen, what I'm hearing you say is that you agree that the jury very well could believe these children that get up and testify.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And if they did, the likelihood is that you would be found guilty by the jury. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So is that really – that risk, is that why you're pleading guilty to this offense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Then I will accept your plea of guilty to this charge of injury to children.

(Tr., p.21, L.23 – p.24, L.12.)

Aside from reading the information to Mr. Begley, there was no mention of any facts supporting the charge, no stipulation from Mr. Begley or his attorney that there is a factual basis for the plea, nor any attempt to summarize the testimony that the State expected would be offered at trial. As the Minnesota Supreme Court noted in *Theis*, acknowledgement by a defendant that there is evidence such that a jury could find a defendant guilty is distinct from the requirement that the trial court determine that a strong factual basis exists for the charge to which the defendant is pleading guilty. As noted by the Court in *Theis*, it is only when both of these factors are present that the court has "a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty, notwithstanding his claims of innocence." *Theis*, 742 N.W.2d at 649 (emphasis in original) (citation omitted).

In denying Mr. Begley's motion for summary disposition on this claim, and in providing notice of its intent to summarily dismiss his amended petition, the district court reasoned,

> Begley claims that because the plea was an Alford Plea, Begley never admitted criminal wrongdoing but instead plead [sic] guilty to expedite the criminal proceedings and avoid financial hardship. This argument has little merit. This Court notified Begley that *Alford vs. North Carolina*, 400 U.S. 25, 91 S.Ct. 160 (1970), "stands for the proposition that a person can plead to a crime even though they don't believe they're guilty but on the basis that they understand that the state's evidence is strong enough that they very well may lose the case at a jury trial." Transcript of Proceedings at 22-23, (Mar. 27, 2009). Begley went on to acknowledge that a jury could likely find him guilty. *Id.* at 24. Even though Begley asserted the costs of a jury trial as a reason for his guilty plea, Begley was properly informed that he could request court appointed counsel who would be paid by the county. Guilty Plea Advisory at 1, (Mar. 27, 2009).[7]

[7] The district court's reliance on the guilty plea advisory form is improper, as it was not a part of the record, nor was it judicially noticed.

> For the foregoing reasons, after reviewing all the records in this case, this Court finds that Begley entered into his Alford Plea voluntarily, knowingly, and intelligently.

(R., pp.83-84.) The district court's decision never addressed Mr. Begley's claim that his *Alford* plea was not knowingly, intelligently, and voluntarily made because, at the plea hearing at which he maintained his innocence, the strong factual basis necessary to render an *Alford* plea constitutionally valid was never . Mr. Begley pointed out this deficiency to the district court in his response to the notice of intent to dismiss (R., pp.87-90), but the district court, in its order summarily dismissing his amended petition, maintained that it had considered all aspects of this claim. (R., p.92.)

Because there was, at the very least, a genuine issue of material fact with respect to Mr. Begley's claim that his *Alford* plea was not knowingly, intelligently, and voluntarily made because the record of the plea hearing, at which he maintained his innocence, did not contain a strong factual basis for his plea, Mr. Begley asserts that the district court erred when it summarily dismissed this claim. As such, he respectfully requests that this Court vacate the district court's judgment of dismissal and remand this matter to the district court for an evidentiary hearing on this claim

II.

The District Court Erred When It Summarily Dismissed Another Of Mr. Begley's Claims Without Providing Notice Of The Reasons For Dismissal

Mr. Begley asserts that the district court erred when, without providing notice of the reasons for dismissal, it summarily dismissed his claim that his attorney was ineffective for failing to object to, and move to strike from the pre-sentence investigation

report, information concerning three other minors who had made unsubstantiated allegations of sexual abuse. Because the district court failed to provide the requisite notice prior to summarily dismissing this claim, it erred when it dismissed this claim.

Idaho Code § 19-4906(b) provides:

> When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

I.C. § 19-4906(b).

"A petitioner is entitled to notice of the trial court's contemplated grounds for dismissal and an opportunity to respond before a petition for post-conviction relief is dismissed. I.C. § 19-4906(b). Failure to provide such notice and opportunity to be heard may result in reversal of a summary dismissal of a petition for post-conviction relief." *Ridgley v. State*, 148 Idaho 671, 676 (2009) (citing *Saykhamchone v. State*, 127 Idaho 319, 321 (1995)). Such a failure "does not automatically require reversal" if the result reached by the district court can be said to have been right for the wrong reason. *Id.*

Mr. Begley made an ineffective assistance of counsel claim in which he asserted that his attorney was deficient for "fail[ing] to object to, and move to strike from the presentence investigation report, information about three (3) other minors who had

made unsubstantiated allegations of sexual abuse by me." (R., p.38.) Mr. Begley's affidavit in support of his amended petition included the following factual assertions:

> 20. Prior to entering to the sentencing hearing, [defense counsel] reviewed the Pre-Sentence Investigation Report ("PSI") as well as my psycho-sexual evaluation.
>
> 21. The PSI included large portions of information, including police reports, about former allegations of child sexual abuse brought against me by three (3) other children who were not a part of the allegations against me in either CR-2008-16849-C[8] or CR-2009-16603-C.[9]
>
> 22. Because I had either been cleared of wrongdoing in those cases, criminal charges were never filed, and/or I had passed an additional polygraph test related to uncharged and alleged victim(s), it was a violation of my Due Process rights to include those materials in the PSI.
>
> 23. However, [defense counsel], who continued to represent me at my sentencing hearing, failed to object to these Due Process violations and move to strike them from the record.
>
> 24. It is abundantly clear from the statements made by my sentencing judge during my sentencing hearing that because other children had accused me of criminal conduct, then this information became the deciding factor for him to impose a prison sentence upon me instead of placing me on probation.

(R., pp.45-46.)

The sentencing transcript[10] supports Mr. Begley's assertions that his attorney failed to object to the inclusion of the uncharged, unproven misconduct in the PSI and

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[8] This is the case number for the original case, in which Mr. Begley was charged with lewd conduct.

[9] This is the case number for the lesser charge of felony injury to a child to which Mr. Begley entered an *Alford* plea.

[10] The district court denied Mr. Begley's request for preparation of the sentencing transcript, erroneously concluding, "this Court cannot find reason necessitating a transcript of the Sentencing Hearing as the sentencing was not challenged in the Petition for Post-Conviction Relief." (R., p.93.) This error was harmless, however, as the State attached a copy of the sentencing hearing transcript to its Memorandum in Opposition to Motion for Summary Disposition. (Exhibit B, attached to Memorandum in Opposition to Motion for Summary Disposition (augmentation).)

the district court's reliance on that information in deciding what sentence to impose. Specifically, when his attorney was asked whether there were "any errors or corrections that you need to note for the record," he responded, "Judge, not of any significance, except *we do not agree with the conclusions reached.*" (Sent.Tr., p.28, Ls.7-12 (emphasis added).) In reaching its decision to impose a prison sentence, rather than suspend it in favor of probation, the district court mentioned the existence of six accusers. (Sent. Tr., p.82, L.21 – p.83, L.14 ("So although I've heard the phrase it's just their word against mine, actually I have six people's word against one, and that is a strong indication that the court needs to consider the complaints of those in the community that say they've been abused").) The district court then reasoned, with respect to the first uncharged incident against him, which it noted had been "investigated thoroughly," resulting in no charges being brought,

> At that time my thinking is, well, if in fact Mr. Begley had come that close to having charges for sexual abuse brought against him, clearly he would conduct himself in a manner that no other child would ever, ever make such an allegation against him again, but it happened a second, a third, a fourth, a fifth, and a sixth time, all separate and apart. And the court can't ignore that. It would appear to the court that a period of incarceration is important for the expectation of community protection.

(Sent.Tr., p.84, L.24 – p.85, L.16.) With this information in the record, Mr. Begley made a *prima facie* showing as to both prongs required under *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

The district court's failure to provide notice of the reason for dismissing this claim was erroneous under I.C. § 19-4906(b). Furthermore, unlike the situation in *Ridgley*, in which the claim at issue was dismissed on two grounds, notice of one of which was provided and which the Supreme Court found to have been correct, here the district

court provided no reasons for its decision to summarily dismiss the PSI claim. As such, the district court erred when it dismissed Mr. Begley's PSI claim, and that failure to provide its reasons was not harmless in light of the fact that he provided a *prima facie* case in support of his claim.

CONCLUSION

For the reasons set forth herein, 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 discussed above, and remand this matter for an evidentiary hearing on both claims.

DATED this 12th day of October, 2012.

SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of October, 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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