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Booth v. State Augmentation Record Dckt. 37296

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In the Supreme Court of the State of Idaho

37296

AUGMENTATION RECORD

TREVOR JAMES BOOTH,

Petitioner-Respondent,

v.

STATE OF IDAHO,

Respondent-Appellant.

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ORDER GRANTING MOTION TO
AUGMENT THE RECORD

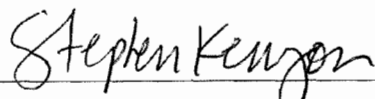
Supreme Court Docket No. 37296-2010
Canyon County Docket No. 2006-8651

A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Appellant on June 11, 2010. Therefore, good cause appearing, IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

- 1. Order Denying Motion for Reconsideration, file-stamped April 27, 2010.

DATED this 17th day of June 2010.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

Handwritten initials

RECEIVED

FILED
A.M. P.M.

APR 27 2010

APR 27 2010

CANYON COUNTY CLERK
T DAVILA, DEPUTY

PROSECUTING ATTORNEY
CANYON COUNTY

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

TREVOR JAMES BOOTH,

CASE NO. CV-06-08651

Petitioner,

vs.

ORDER DENYING MOTION
FOR RECONSIDERATION

STATE OF IDAHO,

Respondent.

The above-entitled cause previously came before the Court as a trial on Trevor Booth's Petition for Post Conviction Relief. On December 1, 2009, this Court entered its Findings of Fact, Conclusions of Law and Order Granting Petition for Post-Conviction Relief. The state filed a Motion to Reconsider pursuant to I.R.C.P 11(a)(2)(B) on December 9, 2009. The petitioner filed his responsive brief on March 1, 2009. No reply was filed by the state. The Court will decide this matter without oral argument.

The main underlying determination of this Court in its decision was that defense counsel fell below an objective standard of reasonableness in one area of his representation of the

ORDER DENYING MOTION
FOR RECONSIDERATION

petitioner. Specifically, Trevor Booth was charged with First Degree Murder in a non-capital case in which the state also filed a request that the jury be asked to determine whether certain statutory "aggravating circumstances," referenced in I.C. §18-4004 (which establishes the punishment for murder) existed.¹ Booth's defense counsel advised him that if he went to trial and the jury found him guilty of First Degree Murder and also found the existence of one of the statutory aggravating circumstances, the judge would be required to sentence him to a fixed life sentence. Upon considering that advice, Booth decided to plead guilty to the charge of First Degree Murder in exchange for the state dropping its pursuit of a statutory aggravating circumstance.

Standard for Reconsideration

Idaho Rule of Civil Procedure 11(a)(2)(B) provides:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

Turning to the specific motion at hand, "[t]he decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). The trial court must: (1) perceive the issue as one of discretion; (2) act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reach its decision by an exercise of reason. *Lettunich v. Lettunich*, 145 Idaho 746, 749, 185 P.3d 258, 261 (2008); *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 215 P.3d 457, 469 (2009).

¹ The enumerated "aggravating circumstances" are reflected in I.C. §19-2515.

Standard for Ineffective Assistance of Counsel

In *Strickland v. Washington*, 466 U.S. 668 (1984), the U.S. Supreme Court articulated a two-part test to be employed in reviewing claims of ineffective assistance of counsel. First, the defendant must prove that his attorney's performance fell below an objective standard of reasonableness. *Id* at 688. Second, if the reviewing court finds that the defendant can prove counsel's performance was constitutionally ineffective, then the defendant must prove that the deficient performance resulted in prejudice. In *Hill v. Lockhart*, 474 U.S. 52 (1985), the U.S. Supreme Court further clarified *Strickland* in cases involving guilty pleas to require a showing that there was "a reasonable probability that, but for his attorney's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." See *Ray v. State*, 136 Idaho 96, 982 P.2d 931 (1999).

Analysis

In its Motion to Reconsider, the state presents three arguments. First, I.C. §18-8004 is "patently clear: a fixed life sentence is required when aggravated circumstances are found in a non-capital case..." Second, that even if the actual advice was wrong, defense counsel acted reasonably. Third, Booth failed to present any evidence to satisfy the second prong of the *Strickland* test; that is, the evidence did not show he would have been acquitted, receive a lesser-included offense, or a lighter sentence.

1. It is *not* patently clear that a fixed life sentence is mandatory in a non-capital murder case. Rather, the state's position that the defendant must receive a mandatory fixed life sentence if a jury finds an aggravating circumstance in a non-capital First Degree Murder case is a statutory impossibility.

With regard to the first argument, it is not patently clear that a fixed life sentence is required in a non-capital case. Idaho Code §18-8004 provides:

Subject to the provisions of sections 19-2515 and 19-2515A, Idaho Code, every

person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. If a jury, or the court if a jury is waived, finds a statutory aggravating circumstance beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence. If a jury, or the court if a jury is waived, does not find a statutory aggravating circumstance beyond a reasonable doubt or **if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years** during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life. (Emphasis added).

This Court agrees with the state that the statute is clear and unambiguous, and that the words must be given their plain, usual, and ordinary meaning. In this case, however, it is clear that the foregoing statute provides that where the death penalty is not sought in a First Degree Murder case, the sentencing Court shall impose a life sentence with a **minimum fixed period of ten years**.

In addition, I.C. §19-2515 sets forth the statutory aggravating factors the state references in its motion. The Court first notes that the statute is entitled: SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FINDINGS. Subsection (5)(a) provides:

If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense.

(emphasis added). Based upon the foregoing, it is clear that only in cases in which 1) a person

has been adjudicated guilty of First Degree Murder, 2) a notice of intent to seek the death penalty had previously been filed, and 3) a special sentencing proceeding is held at which the statutory aggravating circumstances are presented and found to exist, and only in that event, is the Court required to issue a fixed life sentence.²

2. Despite the fact that defense counsel vigorously and diligently pursued his representation of Mr. Booth, his performance in this one area fell below an objective standard of reasonableness.

The state's next argument, that defense counsel's performance did not fall below an objective standard of reasonableness, goes to the first prong of the *Strickland* test, set forth above. This objective standard embraces a strong presumption that the claimant's counsel was competent and diligent. More simply put, "the standard for evaluating attorney performance is objective reasonableness under prevailing professional norms." *Schoger v. Stat*, 226 P.3d 1269 (February 1, 2010)(citing *State v. Mathews*, 133 Idaho 300, 306, 986 P.2d 323, 329 (1999)). Trial counsel's tactical decisions will justify relief if the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review." *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct.App.1994), *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008); *Barcella v. State*, 224 P.3d 536, 544 (Ct.App. 2009) *McKay v. State*, 225 P.3d 700, 703 (2010).

At the time the murder case was filed against Booth, the death penalty provisions of Idaho law had been modified relatively recently (2003) to comply with the U.S Supreme Court case of *Ring v. Arizona*, 536 U.S. 584, 602, 609, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), which required a jury determination of the death penalty sentencing factors. The amendment to the

² Of course, the fixed life sentence is mandatory only if death has been removed as a sentence pursuant to I.C. §19-2515(7)(b).

statute included the new language to §18-4004 that is at issue in this case.³

A lawyer does not meet the objectively reasonable standard if, while advising a client to take a plea offer, he fails to apprise his client of the likely sentence by making a plainly incorrect estimate due to his ignorance of the applicable law of which he should have been aware. *U.S. v. Anderson*, 2010 WL 1458858, 7 (D.D.C. 2010), (citing *United States v. Booze*, 293 F.3d 516, 518 (D.C.Cir.2002); see also *United States v. Hanson*, 339 F.3d 983, 990 (D.C.Cir.2003)). Furthermore, lawyers must be familiar with the federal sentencing guidelines in order to provide effective representation in federal cases. *United States v. McCoy*, 215 F.3d 102, 108 (D.C.Cir.2000)).

It appears that part of the state's argument is that even if defense counsel's advice was incorrect, such advice was objectively reasonable under the circumstances. In support of this position, the state notes that both the prosecution and defense counsel were highly experienced in the field of criminal law, yet they shared the same interpretation of the statute. Further, both counsel reasonably believed that this Court, as presiding judge in the murder case, also interpreted the statute to be consistent with both counsels' interpretation, and that counsel's advice to Mr. Booth was partially based on that understanding.

The facts of the *McCoy* case, *supra*, are similar to this case. In that case, the Court held that counsel's performance was constitutionally deficient even though defense counsel's miscalculation of the applicable sentencing range was reinforced by the prosecutor, and more importantly, the court never informed McCoy of the maximum statutory penalty. See also, *U.S. v. Macon*, 91 Fed. Appx. 239, 244 (C.A.3 (Pa.) 2004),⁴ (*McCoy* case distinguished on these facts). Therefore, even if both counsel and the Court misinterpreted the statutory language in

³ S.L. 2003, ch. 19, § 1.

⁴ (Not selected for publication in the Federal Reporter, NO. 02-3520)

question, advising a client of that the court would have no discretion other than to issue a mandatory fixed life sentence, when such is not the law, falls below an objective standard of reasonableness.

3. The state has misstated the applicable legal standard applicable to the second part of the Strickland standard.

Finally, the state argues that the evidence did not show the defendant would have been acquitted, receive a lesser-included offense, or a lighter sentence. This argument assumes a misstatement of the law. When asserting ineffective assistance of counsel with regard to a guilty plea, a defendant does not need to establish that the result of his case would have been different; rather, he must establish that, but for counsel's deficient performance, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985) *Dunlap v. State*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004); *Gilpin-Grubb v. State*, 138 Idaho 76, 82, 57 P.3d 787, 793 (2002); *McKeeth v. State*, 140 Idaho 847, 851, 103 P.3d 460, 464 (2004); *Ray v. State*, 133 Idaho 96, 101, 983 P.2d 931, 936 (1999); *Ridgley v. State*, 2010 WL 936091, 4 (March 17, 2010).

The Court's Finding of Fact Number 29 reflects:

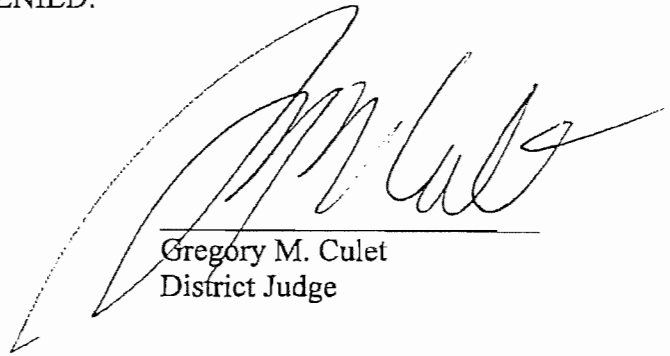
Although Trevor Booth's testimony in the PCR case lacked a significant level of credibility, Richard Harris' testimony was virtually unimpeachable. His testimony establishes that there is a reasonable probability that, but for his opinion and advice that I.C. §18-4004 provides for a mandatory fixed life sentence in a non-capital first degree murder case if a statutory aggravating circumstance is proven, the defendant would not have pled guilty and would have either insisted on going to trial and/or continued to pursue some other plea agreement.

At a minimum, this testimony and record before the Court was sufficient to establish the requisite prejudice.

After carefully considering the arguments presented by the state and the petitioner, as well as the record in its entirety, and for the reasons set forth above and in the Findings of Fact,

Conclusions of Law and Order Granting Petition for Post-Conviction Relief entered December 1,
2009, the state's Motion to Reconsider is HEREBY DENIED.

Dated this 26 day of April, 2010,



Gregory M. Culet
District Judge

CERTIFICATE OF SERVICE:

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Ty Ketlinski
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany St.
Caldwell, ID 83605

U. S. Mail, postage prepaid
 Telecopy/fax
 Personally delivered

Van Bishop
203 12th Ave. Rd, Suite B
Nampa, ID 83686

U. S. Mail, postage prepaid
 Telecopy/fax
 Personally delivered

DATED this 27th day of April, 2010.

Theresa Navalo
Deputy Clerk