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Beighley v. State Appellant's Brief Dckt. 40319

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WENDY BEIGHLEY,)	
)	NO. 40319
Petitioner-Appellant,)	
)	TETON COUNTY NO. CV 2011-370
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TETON

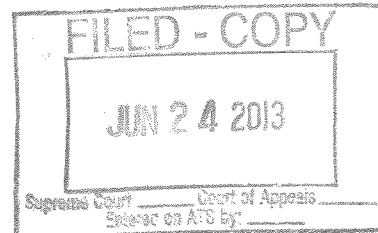
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STATEMENT OF THE CASE

Nature Of The Case

Wendy Beighley appeals from the district court's judgment summarily dismissing her petition for post-conviction relief. On appeal, she asserts that the district court erred when it summarily dismissed her claim that she received ineffective assistance of counsel when her attorney failed to move to withdraw her guilty plea upon the State's breach of the plea agreement.

Statement Of The Facts And Course Of Proceedings

Wendy Beighley was convicted, by guilty plea, of one count of lewd conduct, and received a unified sentence of twenty years, with seven years fixed. On direct appeal, she unsuccessfully challenged the length of her sentence. (R., p.2.) Following her appeal, Ms. Beighley filed a timely, verified petition for post-conviction relief in which she raised a number of claims, only one of which is relevant on appeal: that she received ineffective assistance of counsel when her attorney "refus[ed] to withdraw [her] guilty plea." (R., pp.1-2.) In elaborating on this claim, she explained that "counsel failed to withdraw guilty plea" despite "a clear breach in of [sic] the plea agreement." (R., p.3.)

The district court appointed counsel with respect to the ineffective assistance of counsel claim at issue on appeal, while providing notice of its intent to dismiss her other claims.¹ (R., pp.13-14.) Post-conviction counsel then filed a response to the district court's notice of intent to dismiss in which he gratuitously asserted, *inter alia*, that he

¹ Those claims concerned her sentence and were properly dismissed as they were addressed in her direct appeal.

had contacted trial counsel who “told the undersigned that he never received a request from petitioner to withdraw her plea, either prior to sentencing or after sentencing. He indicated he did not receive a request from her either in writing, in person, or over the phone.” (R., p.23.) Ms. Beighley then filed a handwritten affidavit in which she elaborated on her claim, writing,

I agreed to a guilty plea, for one count with the second to be dropped. I was also told by my attorney Faren Eddins that the prosecuting attorney Chris Lundberg was okay with a sentencing of probation and outpatient treatment. My PSI recommended a “period of incarceration,” during sentencing Mr. Lundberg stated that the Judge follow the recommendation of the PSI for sentencing. Spencer Hahn my appellate Public Defender was the one who found the discrepancy and suggested that [I] ask for a plea withdrawal and to do this before my appeal was decided. I then tried to contact Mr. Eddins by phone several times and was unable to get through to him. I also asked my parents to try and contact Mr. Eddins and they were also unsuccessful in contacting him, before the deadline. Since the time he was appointed to me I had difficulty contacting Mr. Eddins, this is a violation of Code of Professional Conduct IRPC 1.4.

(R., pp.28-29.)

The PSI writer’s recommendation was as follows:

I do recognize the benefits of “community-based placement and outpatient treatment,” including continued counseling sessions as well as sex offender specific treatment. However, I suggest additional sanctions are also warranted in Ms. Beighley’s case. The defendant chose to victimize both of her children, at the request of a stranger. It is impossible to gauge the long-term effects of that abuse on [her children], but I believe Ms. Beighley should be held accountable for her actions and the potential impact to her children. Therefore, I respectfully recommend the Court consider a period of incarceration in the defendant’s case.

(Presentence Investigation Report (*hereinafter*, PSI), pp.11-12.)

The State filed a Response to Petition for Post-Conviction Relief and Motion for Summary Judgment. The State described what it believed to be the likely claim raised by Ms. Beighley as being “that there was a breach of the plea agreement in this matter,”

which it described as “inaccurate, unsupported by the record, unsupported by any admissible evidence known to the State, and if resolved in the Petitioner’s favor would not entitle the Petitioner to the requested relief.” (R., p.39.)

The State described one term of the plea agreement, a copy of which was attached to its response,² as being a promise that “[t]he State does not object to withheld judgment,” and went on to note that there were:

two (2) uncontestable facts in the record of these proceedings that demonstrate that this term of the plea agreement was not violated. The first of those is that the State never objected to the request for a withheld judgment . . . The second uncontestable fact in the record of these proceedings is that, while the State was barred from objecting to a withheld judgment, the State was not obligated to recommend a withheld judgment.

(R., pp.40-41.) The State concluded this portion of its motion by noting that because “the State made no sentencing recommendation and never objected to entry of a withheld judgment, there is simply no basis for the Petitioner to allege that there was a violation of the third term of the plea agreement.” (R., p.42.)

The State also explained that,

the relief requested in this matter in her original Petition . . . a reduction in sentence to a unified term of five (5) years . . . and a subsequent release onto probation, is a remedy inconsistent with the Petitioner’s allegation of ineffective assistance of counsel and/or breach of a plea agreement . . . [because] Petitioner’s length of sentence has been determined on appeal”

(R., p.43.) The State then explained,

If the District Court were to somehow find merit in the Petitioner’s allegations, the appropriate remedy in that case would be to withdraw the

² The copy of the Plea Agreement attached to the State’s response was omitted from the post-conviction appellate record. A copy is contained in the appellate record from Ms. Beighley’s direct appeal (37799 R., pp.23-25), which has been judicially-noticed by this Court.

plea agreement and set the matter for trial on the original Criminal Information containing both Count I and Count II. The State would also be entitled to pursue additional criminal charges related to the facts of the case and would be allowed to object to a withheld judgment at sentencing.

(R., p.43 n.1.)

At a hearing on the State's motion for summary judgment, the district court dismissed the claim regarding her attorney's failure to seek to withdraw her guilty plea, finding, "[i]t was a legal sentence" and that "[s]he has not indicated any grounds which would justify the withdrawal of that plea or any manifest injustice or any other facts upon which the Court might be inclined to withdraw the plea," and concluded that "there is no genuine issue of material fact at issue." (Tr., p.13, L.9 – p.14, L.2.) The district court then issued a Judgment dismissing the petition. (R., p.54.)

Ms. Beighley filed a timely Notice of Appeal. (R., p.56.)

ISSUE

Did the district court err when it summarily dismissed Ms. Beighley's claim that her attorney was ineffective for failing to move to withdraw her guilty plea upon the State's breach of the plea agreement?

ARGUMENT

The District Court Erred When It Summarily Dismissed Ms. Beighley's Claim That Her Attorney Was Ineffective For Failing To Move To Withdraw Her Guilty Plea Upon The State's Breach Of The Plea Agreement

A. Introduction

The district court erred when it summarily dismissed Ms. Beighley's claim that her attorney was ineffective for failing to move to withdraw her guilty plea upon the State's breach of the plea agreement because there was a genuine issue of fact as to the claim.

B. Standards Of Review

1. Ineffective Assistance Of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant in a criminal case the right to counsel, which includes the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). Further, the Constitution guarantees a fair trial through its Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause. *Id.* at 685.

"When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. The Sixth Amendment "relies . . . on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions." *Id.* The "proper measure of attorney performance remains

simply reasonableness under prevailing professional norms.” *Id.* In light of the Sixth Amendment’s reliance upon the legal profession’s standards, the Idaho Supreme Court has stated that the starting point for evaluating criminal defense counsel’s conduct is the American Bar Association’s Standards For Criminal Justice, The Defense Function. *Mitchell v. State*, 132 Idaho 274, 279 (1998).

In addition to proving deficient performance, in most instances a defendant also must prove that he was prejudiced. “The defendant must show that there is a *reasonable probability* that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694 (emphasis added). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* However, a “defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” *Id.* at 693. As was recognized by Justice O’Conner, the author of the *Strickland* opinion, in her concurring opinion in *Williams v. Taylor*, 529 U.S. 362 (2000),

If a state court were to reject a prisoner’s claim of ineffective assistance of counsel on the grounds that the prisoner had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different, that decision would be “diametrically different,” “opposite in character or nature,” and “mutually opposed” to our clearly established precedent because we held in *Strickland* that the prisoner need only demonstrate a “reasonable probability that . . . the result of the proceeding would have been different.”

Id. at 405-06 (O’Connor, J. concurring) (quoting *Strickland*, 466 U.S. at 696).

2. Summary Dismissal

An application for post-conviction relief is civil in nature. *Gilpin-Grubb v. State*, 138 Idaho 76, 79-80 (2002). An application for post-conviction relief must be verified

with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*

The court may summarily dismiss a petition for post-conviction relief when the court is satisfied the applicant is not entitled to relief and no purpose would be served by further proceedings. I.C. § 19-4906(b). In considering summary dismissal in a case where evidentiary facts are not disputed, summary dismissal may be appropriate, despite the possibility of conflicting inferences, because the court alone will be responsible for resolving the conflict between the inferences. *See State v. Yakovac*, 145 Idaho 437, 444 (2008) (addressing case where State did not file a response to petition). However, where the facts are disputed, a court is required to accept the petitioner's un rebutted factual allegations as true, but it need not accept the petitioner's conclusions. *Charboneau v. State*, 144 Idaho 900, 903 (2007).

Summary disposition on the pleadings and record is not proper if a material issue of fact exists. I.C. § 19-4906. When genuine issues of material fact exist that, if resolved in the applicant's favor, would entitle the applicant to relief, summary disposition is improper and an evidentiary hearing must be held. *Baldwin v. State*, 145 Idaho 148, 153 (2008). At the summary dismissal stage, the petitioner need only present *prima facie* evidence of both prongs of *Strickland*. *McKay v. State*, 148 Idaho 567, 571 (2010).

When reviewing a district court's order of summary dismissal in a post-conviction relief proceeding, the reviewing court applies the same standard as that applied by the district court. *Ridgley v. State*, 148 Idaho 671, 675 (2010). Therefore, on review of a

dismissal of a post-conviction relief application without an evidentiary hearing, this Court determines whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and liberally construes the facts and reasonable inferences in favor of the non-moving party. *Charboneau*, 144 Idaho at 903 (citation omitted). The lower court's legal conclusions are reviewed *de novo*. *Owen v. State*, 130 Idaho 715, 716 (1997).

C. The District Court Erred When It Summarily Dismissed Ms. Beighley's Claim That Her Attorney Was Ineffective For Failing To Move To Withdraw Her Guilty Plea Upon The State's Breach Of The Plea Agreement

The evidence before the district court at the time that it summarily dismissed Ms. Beighley's ineffective assistance of counsel claim clearly established a genuine issue of material fact as to whether her attorney was ineffective for failing to move to withdraw her guilty plea upon the State's breach of the plea agreement.

Ms. Beighley established that she had entered into a plea agreement with the State, one of the terms of which was that the State would not object to a withheld judgment. (R., pp.1-3; 37799 R., p.24 ("The State does not object to withheld judgment").) At sentencing, defense counsel asked that the district court grant Ms. Beighley a withheld judgment. (37799 Sent.Tr., p.29, Ls.4-7.) While the State did not expressly object to a withheld judgment and advocate imposition of a prison sentence, it did so tacitly when it said,

Finally, you know, I, I guess I would just refer to the – to all the recommendations in the presentence investigation [report], including the recommendation for what to do, to do in this case; and just ask the Court to be sure to review all, all of the information contained in this, in this packet, weigh it appropriately, and, and certainly weigh all those recommendations for, for appropriate sentencing in this matter.

(37799 Sent.Tr., p.33, Ls.4-12 (emphasis added).)

The PSI's recommendation was as follows:

I do recognize the benefits of "community-based placement and outpatient treatment," including continued counseling sessions as well as sex offender specific treatment. However, I suggest additional sanctions are also warranted in Ms. Beighley's case. The defendant chose to victimize both of her children, at the request of a stranger. It is impossible to gauge the long-term effects of that abuse on [her children], but I believe Ms. Beighley should be held accountable for her actions and the potential impact to her children. Therefore, I respectfully recommend the Court consider a period of incarceration in the defendant's case.

(PSI, pp.11-12.)

This tacit objection to a withheld judgment constituted a breach because, while a judgment remains withheld, a prison sentence cannot be executed. I.C. § 19-2601. Despite this clear breach of the plea agreement, defense counsel did not object, did not advise Ms. Beighley of her ability to move to withdraw her guilty plea, and did not file a motion to withdraw her guilty plea. (R., pp.1-3, 28-29.) Ms. Beighley was prejudiced because, upon the issuance of the remittitur in her direct appeal, the district court lost jurisdiction to consider a motion to withdraw her guilty plea. See *State v. Peterson*, 148 Idaho 610, 614 (Ct. App. 2010).

When a defendant enters a guilty plea in reliance upon a promise by the prosecution, a breach of that promise will invalidate the plea. Because a guilty plea waives certain constitutional rights, "a defendant is constitutionally entitled to relief when the state breaches a promise made to him in return for a plea of guilty."

Mata v. State, 124 Idaho 588, 595 (Ct. App. 1993) (citations omitted). "[A]n essential duty" of defense counsel is to object upon a prosecutor's breach of a plea agreement. Failure to do so constitutes ineffective assistance of counsel. *State v. Horness*, 600 N.W.2d 294, 301 (Iowa 1999).

A prosecutor may not pay mere “lip service” to his or her obligations under a plea agreement. See *State v. Daubs*, 140 Idaho 299, 300 (Ct. App. 2004) (“If the prosecution has breached its promise given in a plea agreement, whether that breach was intentional or inadvertent, it cannot be said that the defendant’s plea was knowing and voluntary, for the defendant has been led to plead guilty on a false premise. In such an event, the defendant will be entitled to relief.”) (citations omitted).

In *Daubs*, the prosecutor originally assigned to the case reached a plea agreement with Daubs under the terms of which the State would “recommend that Daubs receive no more than a rider.” At the sentencing hearing, a new prosecutor acknowledged the State’s promise to ask for no more than a rider before it “directed the court’s attention to the presentence investigation (PSI) report, which recommended prison” *Id.* The Court of Appeals described the prosecutor’s statements as “fundamentally at odds with the terms of the plea agreement” because it included “highlight[ing] the contrary recommendation of the PSI investigator” for a prison sentence, and concluded that it “amount[ed] to an abrogation of the plea agreement, and a tacit adoption of a recommendation altogether different from the one for which the state and defendant had bargained,” and breached the plea agreement. *Id.*

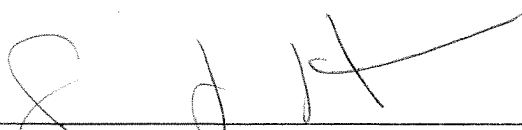
In this case, Ms. Beighley established that the State breached the term of the plea agreement that it would not object to a withheld judgment when it, like the prosecutor in *Daubs*, tacitly adopted the PSI’s recommendation that a prison sentence be executed. Ms. Beighley also established that her attorney failed to object to the breach and failed to counsel her that she could move to withdraw her plea, let alone file a motion to withdraw her guilty plea. Ms. Beighley’s claim of ineffective assistance of

counsel presented a genuine issue of material fact for which she was entitled to an evidentiary hearing, and the district court erred when it summarily dismissed it.

CONCLUSION

For the reasons set forth herein, Ms. Beighley respectfully requests that this Court vacate the judgment of dismissal as to her claim, and remand this matter for an evidentiary hearing.

DATED this 24th day of June, 2013.



SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of June, 2013, 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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INMATE #96262
PWCC
1451 FORE ROAD
POCATELLO ID 83205

HON DARREN B SIMPSON
DISTRICT COURT JUDGE
E-MAILED BRIEF

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