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IN THE SUPREME COURT OF THE STATE OF IDAHO

RONALD LEE MACIK,)	
)	No. 40321
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-13953
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE CHERI C. COPSEY
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JESSICA M. LORELLO
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
RESPONDENT

SHAWN F. WILKERSON
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
PETITIONER-APPELLANT

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Lee Macik appeals from the district court's order summarily dismissing his untimely petition for post-conviction relief, filed nearly 40 years after he pled guilty to first-degree murder.

Statement Of Facts And Course Of Proceedings

On August 31, **1972**, Macik pled guilty to first-degree murder, and, on September 14, 1972, the court imposed a life sentence. (R., p.29.) "Macik evidently did not appeal, or any appeal that he filed was dismissed, [as there is] no record of an appeal in his case other than the appeal of his co-defendant, Danny Powers." State v. Macik, Docket No. 39233, 2012 Unpublished Opinion No. 491 (Idaho App. May 24, 2012).¹

"On March 14, 2011, Macik wrote a letter to the district court which was treated as a motion to withdraw his guilty plea, and counsel was appointed to represent him." Macik at p.1. "The district court denied Macik's motion upon concluding that the court was without jurisdiction to consider the merits of his claim." Id. The Court of Appeals affirmed, stating: "It is apparent that the district court did not possess jurisdiction to grant Macik's motion to withdraw his guilty plea more than thirty-eight years after judgment was entered. Therefore, the

¹ The district court took judicial notice of "the underlying record, in Case No. CR-FE-1971-000949 (formerly Case No. Cr. 4949)" and the Court of Appeals' opinion "remitted" on June 28, 2012. (R., p.21.) A copy of the Court of Appeals' 2012 opinion in Macik is attached hereto as Appendix A.

district court's order denying Macik's motion to withdraw his guilty plea is affirmed." *Id.* at p.2.

On July 26, 2012, two months after the Court of Appeals affirmed the denial of Macik's motion to withdraw his guilty plea, Macik filed a *pro se* petition for post-conviction relief alleging (1) a court-ordered mental evaluation report was withheld from the defense; (2) a "violation of [his] Miranda rights"; and (3) his guilty plea was coerced. (R., pp.3-4.) Macik also alleged counsel was not present at his change of plea hearing, he did not receive "a record of any proceeding in CR-4949 until May 27, 2009," "another inmate confessed to committing the murder" and he "did not have a clear or sound mind." (R., p.5.) Macik also filed a motion for the appointment of counsel, which the district court denied upon concluding "Macik's post-conviction claims are untimely." (R., pp.10-13, 23.) More specifically, the court noted Macik "fail[ed] to allege anything that raises the *possibility* of valid claims" since all of Macik's claims relate to his "entry of plea on August 31, 1972, or potential suppression issues" and "do not relate to his Motion to Withdraw Plea filed March 17, 2011, thirty-eight and one-half (38½) years after pleading guilty, which th[e] Court denied on September 8, 2011." (R., pp.23-24 (emphasis original).)

On August 22, 2012, the state filed a motion for summary dismissal, asserting that "although [Macik] did file a substantive motion in 2011, the matters in the Uniform Post-Conviction petition address proceedings that occurred in 1971-1972. Accordingly, the petition is well outside the one-year time limit

established in I.C. 19-4902.” (R., pp.26-27.) The district court entered an order dismissing Macik’s petition on August 27, 2012. (R., pp.29-32.)

Two days later, Macik filed a “Motion for Leave to Amend,” arguing (verbatim):

The Petitioner was granted permission to file a direct appeal on His conviction by the Idaho Court’s of Appeals, and that direct appeal was denied. Petition now seeks to file an original Post-Conviction Petition as provided by law, upon his conviction based on allegations of ineffective assistance of counsel and other matters, which will be more defined in an amended petition. Petitioner originally predicated that counsel would be appointed and his counsel would amend the petition according to prerequisites of the Court. However, counsel has been denied and Petition must now conform his Petition without the benefit of counsel, and prays this Honorable Court will permit Petitioner the right pursuant to the Act, to amend His petition before dismissal so that proper evidence and allegations can be submitted for the courts review, as counsel is not available to do so.

The Petitioner requests permission to file documents, affidavit’s, transcripts, and other material evidence in support of His claims. He is unschooled in the law, has limited resources and it would be a manifest injustice to determine the merits of his claims without giving Him the opportunity to amend pursuant to statutory mandate.

(R., pp.33-34.)

The court denied Macik’s motion because Macik failed to “present any good cause as to why any new claims exist that could not have been included in the Petition” and because Macik failed to “identify what, if any, new claims he might have.” (R., p.36.) The court also reiterated that Macik’s “underlying criminal case is nearly forty (40) years old.” (Id.)

The court entered judgment on August 30, 2012, from which Macik filed a timely notice of appeal. (R., pp.38-43.)

ISSUE

Macik states the issue on appeal as:

Did the district court err when it dismissed Mr. Macik's post-conviction petition without providing him twenty days to respond to the State's motion to dismiss?

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Has Macik failed to show reversible error in the summary dismissal of his untimely post-conviction petition?

ARGUMENT

Macik Has Failed To Establish Reversible Error In The Summary Dismissal Of His Untimely Post-Conviction Petition

A. Introduction

Macik asserts the district court erred when it dismissed his petition because the court did not give him 20 days to respond to the state's motion for summary dismissal. (Appellant's Brief, p.3.) Although Macik is correct in his assertion that the district court dismissed his petition without giving him 20 days to respond to the state's motion for summary dismissal, the Court should find the error harmless in this case.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Macik Has Failed To Show Reversible Error In The Summary Dismissal Of His Untimely Petition

"Idaho Code § 19-4906(c) permits either party in a post-conviction relief proceeding to file a motion for summary disposition of the application." DeRushé v. State, 146 Idaho 599, 601, 200 P.3d 1148, 1150 (2009). Although the district court is not required to provide a 20-day notice prior to granting a state's motion for summary dismissal, the Idaho Supreme Court has held that a "like twenty day

period of time shall be allowed” to respond to the state’s motion. State v. Christensen, 102 Idaho 487, 489, 632 P.2d 676, 678 (1981); also Saykhamchone v. State, 127 Idaho 319, 322, 900 P.2d 795, 798 (1995) (“After the state files a subsection (c) motion, a petitioner is still entitled to twenty days to respond, so as to afford an opportunity to establish a material fact issue.”). Although the district court dismissed Macik’s petition before the 20-day period expired, the Court should find the error harmless in this case.

Post-conviction relief proceedings are governed by the Idaho Rules of Civil Procedure. DeRushé, 146 Idaho at 601, 200 P.3d at 1150 (citing Stuart v. State, 127 Idaho 806, 813, 907 P.2d 783, 790 (1995); I.C. § 19-4907(a)). Idaho Rule of Civil Procedure 61 states, in relevant part: “The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”

“Prior to 1979, applications for post-conviction relief could be filed at any time.” LaFon v. State, 119 Idaho 387, 388, 807 P.2d 66, 67 (Ct. App. 1991). In 1979, the legislature amended I.C. § 19-4902 to impose a five-year statute of limitation, and the Court of Appeals “ruled that the five-year statute of limitation applies to applications for relief from convictions entered before 1979.” Id. “In such cases, the five-year limitation period began to run on July 1, 1979, the effective date of the amendment.”² Id. at 389, 807 P.2d at 68 (citation omitted). Thus, Macik had until July 1, 1984, to file his post-conviction petition. Macik did not, however, file his petition until 28 years later. (R., p.3.)

² Idaho Code Section 19-4902 has since been amended and now provides for a one-year limitation period.

The failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Evensiosky v. State, 136 Idaho 189, 190-191, 30 P.3d 967, 968-969 (2001). However, “[i]n Idaho, equitable tolling of the statute of limitation for filing a post-conviction petition has been recognized” in two circumstances: (1) “where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials;” and (2) “where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction.” Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009) (citations omitted).

Nowhere in his petition or supporting affidavit does Macik explain why his petition was not filed until decades after he pled guilty. (See generally R., pp.3-9.) Nor did Macik provide any explanation in his Motion for Leave to Amend. (See generally R., pp.33-34.) Macik correctly notes that, in his petition and affidavit, he asserted he was on Thorazine. (Appellant’s Brief, p.4; R., pp.4, 8.) Macik, however, also acknowledges “those facts alone would not necessarily establish a justification for equitable tolling,” but claims, “if provided the opportunity, [he] could have established that his mental incapacity persisted to the date he filed his post-conviction petition.” (Appellant’s Brief, p.4.) Contrary to Macik’s suggestion on appeal, he was not deprived of that opportunity.

While Macik was not required to allege in his petition the reasons he failed to comply with the statute of limitation and why he should be entitled to tolling, the court’s order denying his request for counsel put him on notice that his

petition failed to state the possibility of a valid claim because all of the claims were untimely. Anderson v. State, 133 Idaho 788, 792, 992 P.2d 783, 787 (Ct. App. 1999) (“Although it would be prudent for an applicant to allege facts which he contends would avoid the time bar when an application is filed outside the one-year period specified in § 19-4902, the absence of such allegations in the initial pleading is not fatal to an applicant's claims.”) Macik subsequently filed his Motion for Leave to Amend, acknowledging that the court denied his request for counsel and requesting leave amend his petition to provide “proper evidence and allegations” including affidavits, transcripts, “and other material evidence in support of His [sic] **claims**.” (R., p.34 (emphasis added).) Despite the opportunity to address the court’s finding that his petition was untimely, Macik said nothing about how he could overcome this procedural hurdle. Instead, Macik essentially asked the court to provide him additional time to provide evidence to support his **claims**.

Further, it should be noted that Macik’s references to Thorazine were not made in the context of any request for tolling, nor did he allege that he has been on Thorazine for the past 40 years. (See generally R., pp.4, 8.) What Macik alleged was that he was placed on Thorazine on October 1, 1969, when he was “committed to” prison and was “required to take [it] three times daily before during and after [his] trial essentially causing [him] to be a mere spetator [sic] at [his] own trial incapable of any rational thought [and] abandoned by [his]

assigned attorney and forced to plead.” (R., p.8 (punctuation original).)³ Macik’s assertion that he “**could** have established that his mental incapacity persisted to the date he filed his post-conviction petition” if he had been “provided the opportunity” is not only speculative, it is inconsistent with the record as Macik’s petition and affidavit do not suggest that he was prevented from filing a petition due to Thorazine and he was able to file a responsive pleading with the court, but failed to address the critical defect in his petition. Cf. Anderson, 133 Idaho at 793, 992 P.2d at 788 (“In this case, Anderson did not respond to the State’s motion with an affidavit or other documentary evidence of facts that would toll the statute of limitations.”).

Because Macik did not file his post-conviction petition until nearly 40 years after he pled guilty and 28 years after the statute of limitation expired, and given that he had an opportunity, before judgment was entered, to provide the district court with evidence that he should be entitled to tolling for the enormous delay beyond the five-year statute of limitation, the Court should find the failure to afford Macik 20 days in which to respond to the state’s motion harmless.

³ Although Macik does not assert it as a potential basis for tolling, Macik also alleged in his petition that he was transferred to a “Federal Prison at Lewisburg PA” on “Dec 1st 1972.” (R., p.8.) As with Macik’s Thorazine-based incompetence argument, Macik made no connection between his transfer and his ability to file a post-conviction petition. Indeed, Macik acknowledges in his affidavit that he was able to file a motion to withdraw his guilty plea in 2011 at which time he was represented by the Ada County Public Defender. (R., p.8.)

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Macik's petition for post-conviction relief.

DATED this 11th day of June 2013.



JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of June 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



JESSICA M. LORELLO
Deputy Attorney General

JML/pm

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 39233

STATE OF IDAHO,)	2012 Unpublished Opinion No. 491
)	
Plaintiff-Respondent,)	Filed: May 24, 2012
)	
v.)	Stephen W. Kenyon, Clerk
)	
RONALD L. MACIK,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copey, District Judge.

Order denying motion to withdraw guilty plea, affirmed.

Sara B. Thomas, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Ronald L. Macik appeals from the district court’s denial of Macik’s motion for withdrawal of his guilty plea, which was filed more than thirty-eight years after entry of his judgment of conviction.

On September 14, 1972, Macik was convicted of first degree murder on his plea of guilty. He was sentenced to a term of life imprisonment. Macik evidently did not appeal, or any appeal that he filed was dismissed, for we find no record of an appeal in his case other than the appeal of his co-defendant, Danny Powers. On March 14, 2011, Macik wrote a letter to the district court which was treated as a motion to withdraw his guilty plea, and counsel was appointed to represent him. The district court denied Macik’s motion upon concluding that the court was without jurisdiction to consider the merits of his claim.

Although “[m]indful of *State v. Jakoski*, 139 Idaho 352, 355, [79 P.3d 711, 714] (2003),” in which the Idaho Supreme Court held that a trial court is without jurisdiction to entertain a

motion for withdrawal of a guilty plea after the judgment in the criminal case has become final, Macik nevertheless appeals. In *Jakoski*, the Supreme Court stated, “Absent a statute or rule extending its jurisdiction, the trial court’s jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.” *Id.* at 355, 79 P.3d at 714. Idaho Criminal Rule 33(c), which authorizes motions to withdraw guilty pleas, “does not include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea.” *Id.* Consequently, a trial court possesses no jurisdiction to consider a motion for withdrawal of a guilty plea after the judgment of conviction has become final. This absence of jurisdiction precludes consideration of a motion to withdraw a guilty plea “irrespective of the merits” of the defendant’s claim. *State v. Wegner*, 148 Idaho 270, 272, 220 P.3d 1089, 1091 (2009).

It is apparent that the district court did not possess jurisdiction to grant Macik’s motion to withdraw his guilty plea more than thirty-eight years after judgment was entered. Therefore, the district court’s order denying Macik’s motion to withdraw his guilty plea is affirmed.

Chief Judge GRATTON and Judge GUTIERREZ **CONCUR.**