10-1-2013

Urrizaga v. State Appellant's Reply Brief Dckt. 40415

IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD JOHN URRIZAGA,	)	
	)	NO. 40415
Petitioner-Appellant,	)	
v.	)	TWIN FALLS COUNTY
	)	NO. CV 2012-3104
STATE OF IDAHO,	)	
	)	APPELLANT'S
Respondent.	)	REPLY BRIEF
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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STATEMENT OF THE CASE

Nature of the Case

Richard Urrizaga appeals the dismissal of his successive petition for post-conviction relief without having been appointed counsel. He contends that he presented the possibility of a valid claim, and so, should have been appointed counsel to assist him in investigating and presenting that claim.

The State does not argue that the successive petition is inappropriate. Rather, it goes straight to the merits, contending that Mr. Urrizaga has not presented sufficient evidence to show that the laboratory results in his case were erroneous (*i.e.*, he did not present sufficient evidence to establish a genuine issue of material fact). That argument is misplaced, since Mr. Urrizaga's claim on appeal is that he should have been afforded the assistance of an attorney to help him collect that evidence and present it to the district court, thereby establishing a genuine issue of material fact. Basically, the State is arguing under the wrong standard.

All Mr. Urrizaga needs to do to merit the appointment of counsel is present the possibility of a valid claim, which he did by asserting in his unrefuted affidavit that he believes the test results in his case were tainted by misconduct at the laboratory that tested the evidence in his case. Since, if he were correct, he would be entitled to relief, Mr. Urrizaga has presented the possibility of a valid claim. Therefore, Mr. Urrizaga should have been afforded the assistance of counsel in pursuing that claim.

Statement of the Facts and Course of Proceedings

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

ISSUE

Whether the district court erred by not appointing post-conviction counsel in light of the fact that Mr. Urrizaga had asserted facts which raised the possibility of a viable post-conviction claim.

ARGUMENT

The District Court Erred By Not Appointing Post-Conviction Counsel In Light Of The Fact That Mr. Urrizaga Had Asserted Facts Which Raised The Possibility Of A Viable Post-Conviction Claim

The proper standard under which Mr. Urrizaga's claim should be reviewed is, "'[i]f the petitioner alleges facts to raise the possibility of a valid claim,'" counsel should be appointed in that case. *Judd v. State*, 148 Idaho 22, 24 (Ct. App. 2009) (quoting *Charboneau v. State*, 140 Idaho 789, 793 (2004)) (emphasis added)). When the petitioner files his petition *pro se*, the Idaho Supreme Court has recognized that the petition may contain conclusory and incomplete information, but has held such issues are not instantly fatal to the petition. *Swader v. State*, 143 Idaho 651, 653-54 (2007). Rather, if those claims, conclusory and incomplete as they are, still raise *the possibility* of a valid claim, counsel should be appointed. *Charboneau*, 140 Idaho at 793; *Judd*, 148 Idaho at 24. The point of appointing counsel is to assist the petitioner in perfecting the claims, conducting the necessary investigations and gathering the necessary evidence to survive a subsequent summary dismissal determination. *See Swader*, 143 Idaho at 653-54; *Charboneau*, 140 Idaho at 792-93.

The State, however, attempts to argue that Mr. Urrizaga's petition was properly dismissed relying on the distirct court's assertion that Mr. Urrizaga "'failed to allege facts to show that the lab's testing *in his case* was inaccurate.'" (Resp. Br., pp.10-11 (quoting R., p.36) (emphasis from original).) Besides ignoring the Idaho Supreme Court's holding in *Swader*, this argument is premature, and irrelevant to the issue raised by Mr. Urrizaga on appeal. There are, essentially, three decision points that occur when a post-conviction petition is filed *pro se*: (1) whether counsel should be appointed to

assist the petitioner; (2) whether the claim should be summarily dismissed; (3) whether the petitioner proved his claim by a preponderance of the evidence. *See* I.C. § 19-4901, *et seq.*; *Charboneau*, 140 Idaho at 792-93. When the district court fails to address the first question, but instead, jumps straight to the second, it commits reversible error. *Id.* The State, as the district court did in *Charboneau*, jumps straight to the second decision point – whether the evidence presented by the defendant is sufficient to make out a claim (*i.e.*, present the district court with a genuine issue of material fact). (*See* Resp. Br., pp.10-11.) That does not matter in regard to the first decision point, which is where Mr. Urrizaga is challenging the district court. At that point, he is not required to make out the claim, present a genuine issue of material fact; he is only required to show *the possibility* that he could make out a claim with the assistance of counsel. *Swader*, 143 Idaho at 653-54. As such, the State's premature arguments should be, like the district court's premature decision in *Charboneau*, rejected. *See Charboneau*, 140 Idaho at 792-93.

This appeal focuses on the first decision point – whether Mr. Urrizaga raised *the possibility* of a valid claim. This is not meant to be an onerous burden, since the fact that the petitioner is presenting conclusory or incomplete assertions of fact will not prevent him from meriting the assistance of counsel. *Id.*; *Swader*, 143 Idaho at 653-54. In fact, Mr. Urrizaga did present the possibility of a valid claim. His allegation was that the analysts at the laboratory "either accidentally or purposely substituted 'unaccounted for' drugs" for the sample in his case. Such an allegation, if true, would merit post-conviction relief. I.C. § 19-4901(a)(4) ("there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in

the interest of justice"); *see, e.g., Dachlet v. State*, 136 Idaho 752, 756-57 (2001) (noting that the defendant failed to prove the evidence had been tampered with, suggesting if he had, he would have been entitled to a new trial). As such, since Mr. Urrizaga has presented *the possibility* of a valid claim, he should have been appointed an attorney to help him investigate and prosecute that claim.

CONCLUSION

Mr. Urrizaga respectfully requests that this Court vacate the order summarily dismissing his successive post-conviction petition and remand this case for further proceedings with the assistance of counsel.

DATED this 1st day of October, 2013.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of October, 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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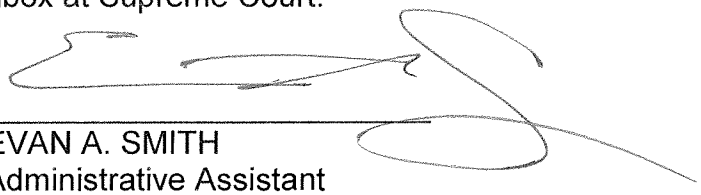

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BRD/eas