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Mendoza v. State Respondent's Brief Dckt. 40649

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IN THE SUPREME COURT OF THE STATE OF IDAHO

PABLO MERAZ MENDOZA,)	
)	No. 40649
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-18267
)	
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 TIMOTHY L. HANSEN
District Judge

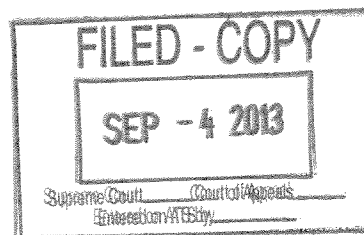
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STATEMENT OF THE CASE

Nature of the Case

Pablo Meraz Mendoza appeals from the district court's order summarily dismissing his successive petition for post-conviction relief.

Statement of Facts and Course of Prior Post-Conviction Proceedings

The facts and course of proceedings relating to Mendoza's first post-conviction action are as set forth by the district court in its order giving Mendoza notice of its intent to dismiss his successive petition for post-conviction relief:

Following Petitioner's trial before a jury in the instant action, verdicts were returned on January 15, 1993, finding him guilty of four counts of trafficking in heroin and one count of conspiracy to deliver heroin. On March 5, 1993, a Judgment and Commitment entered, sentencing Petitioner to a term of life in prison with the first twenty years fixed for the offense of conspiracy to deliver heroin and a term of seven years with the first three years fixed for each of the counts of trafficking in heroin; each to run consecutively to the other, but concurrently with the sentence for conspiracy to deliver heroin. Petitioner appealed this judgment; however, the Supreme Court of Idaho dismissed that appeal and a Remittitur entered on March 4, 1994. Thereafter, Petitioner sought to reinstate his appeal which was denied by the Idaho Supreme Court in its Order Denying Motion to Reinstate Appeal dated October 6, 2000. Petitioner subsequently filed a motion titled Correction of Illegal Sentence (Rule 35) which the Court denied in its Order Denying Motion for Correction of Sentence entered on April 9, 2007. Petitioner appealed this decision; however, the Idaho Court of Appeals affirmed the trial court in a decision filed on November 9, 2007, for which a Remittitur entered on February 4, 2008. On June 23, 2010, Petitioner filed his first post-conviction petition in Case No. CV-PC-2010-12700, well past one year from the final remittitur by the Idaho Court of Appeals and more than sixteen years from the remittitur following the Idaho Supreme Court's dismissal of the appeal of his Judgment of Conviction and Commitment, and therefore untimely. See I.C. § 19-4902(a). The Court entered its Order Denying Motion for Appointment of Counsel and Notice of Intent to Dismiss the Application for Post-Conviction Relief as to Petitioner's first petition on December 9, 2010. Having waited more than twenty days and

having received no response from Petitioner, the Court entered its Order dismissing Petitioner's first petition on January 10, 2011.

(R., p.125.)

Statement of Facts and Course of Successive Post-Conviction Proceedings

Mendoza filed a *pro se* successive petition for post-conviction relief in October of 2012. (R., pp.8-20.) In it, Mendoza raised several issues of ineffective assistance of counsel, including claims counsel was ineffective for

 failing to object to the admission of prejudicial statements, failing to object to the omission of certain jury instructions concerning a charge of conspiracy, and failing to present testimony of witnesses to impeach the testimony of the State's key witness.

(R., p.125.) The state asserted all of Mendoza's claims were subject to summary dismissal because Mendoza had shown no basis for equitable tolling. (R., pp.122-123.)

The district court filed an order giving Mendoza the statutory 20 days to respond to its notice of intent to dismiss his successive petition for post-conviction relief as untimely. (R., pp.124-128.) Mendoza filed a response to the court's notice of its intent to dismiss, but failed to assert any basis for equitable tolling under Idaho law. (R., pp.129-133.)

The district court then filed a memorandum decision and order dismissing Mendoza's successive petition for post-conviction relief:

 Petitioner in the case at bar has presented nothing in either his petition or his response tending to show that his circumstances fall within those situations where the equitable tolling doctrine would apply. Having failed to do so, the Court finds that the Successive Petition for Post Conviction Relief is untimely and there is no basis for tolling the applicable time limits.

(R., pp.134-135.) Mendoza timely appealed from the judgment dismissing his successive petition for post-conviction relief. (R., pp.137-142.)

ISSUE

Mendoza states the issues on appeal as:

I. Does an Idaho District Court acquire jurisdiction to engrave an exception for equitable tolling from Murray v. Carrier, 477 U.S. 478 (1986), and its progeny if facts demonstrate one of the principles set forth by the high court?

II. Do facts in a petition for post-conviction relief that demonstrate violations of the Sixth Amendment right to effective assistance of counsel, and Fourteenth Amendment rights to a fair trial raise the possibility of a valid claim for equitable tolling when affixed to a claim of innocence?

(Appellant's brief, p.2.)

The state rephrases the issue on appeal as:

Has Mendoza failed to establish that the district court erred by summarily dismissing his successive post-conviction petition?

ARGUMENT

Mendoza Has Failed To Establish That The District Court Erred By Summarily Dismissing His Successive Post-Conviction Petition

A. Introduction

The district court dismissed Mendoza's successive petition, finding Mendoza failed to cite the court to any "facts which would raise the possibility of tolling the time limits for filing his post-conviction petition[.]" (R., p.134.) The district court further found the United States Supreme Court case relied on by Medoza was inapplicable as it governed federal habeas corpus claims and not "a petition in state court for post-conviction relief." (Id.) On appeal, Mendoza again fails to assert any basis under which he is entitled to equitable tolling under Idaho law but continues to assert federal law governing habeas corpus entitles him file his successive state petition for post-conviction relief almost 19 years following the filing of the remittitur following the dismissal of his original appeal. (See generally Appellant's brief, pp.7-10.)

Mendoza's argument on appeal is without merit.

B. Standard Of Review

The appellate court exercises free review over the district court's application of the Uniform Post Conviction Procedure Act. Evensiosky v. State, 136 Idaho 189, 190, 30 P.3d 967, 968 (2001). On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v.

State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

C. Dismissal Of Mendoza's Successive Petition For Post-Conviction Relief Was Appropriate

A petition for post-conviction relief initiates a new and independent civil proceeding and the petitioner bears the burden of establishing, by a preponderance of the evidence, that he is entitled to relief. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). However, a petition for post-conviction relief differs from a complaint in an ordinary civil action. A petition must contain more than "a short and plain statement of the claim" that would suffice for a complaint. Workman, 144 Idaho at 522, 164 P.3d at 522 (referencing I.R.C.P. 8). The petitioner must submit verified facts within his personal knowledge and produce admissible evidence to support his allegations. Id. (citing I.C. § 19-4903). Furthermore, the factual showing in a post-conviction relief application must be in the form of evidence that would be admissible at an evidentiary hearing. Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 551 (1982); Cowger v. State, 132 Idaho 681, 684, 978 P.2d 241, 244 (Ct. App. 1999).

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief in response to a party's motion or on the court's own initiative. "To withstand summary dismissal, a post-conviction applicant must

present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 “if the applicant’s evidence raises no genuine issue of material fact” as to each element of petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s unrebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). If the alleged facts, even if true, would not entitle the petitioner to relief, the trial court is not required to conduct an evidentiary hearing prior to dismissing the petition. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)). “Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

Applying these principles in this case, the district court summarily dismissed Mendoza’s petition as untimely. Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition “any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of proceedings following an

appeal, whichever is later.” Absent a showing by the petitioner that the one-year statute of limitation should be tolled, 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, 30 P.3d 967 (2001); Sayas v. State, 139 Idaho 957, 959, 88 P.3d 776, 778 (Ct. App. 2003). The only three circumstances in which Idaho recognizes equitable tolling are: (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,” Sayas, 139 Idaho at 960, 88 P.3d at 779; (2) “where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction,” Id.; and (3) where there are “claims which simply [were] not known to the defendant within the time limit, yet raise important due process issues,” Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009) (quoting Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007)). Mendoza’s petition did not allege any of the foregoing bases as a reason to toll the limitation period for filing his petition. (See generally Appellant’s brief, pp.8-20.)

Applying the above principles in this case, the district court summarily dismissed Mendoza’s petition. Contrary to Mendoza’s assertions on appeal, a review of the record and the applicable law supports the district court’s order of summary dismissal. Mendoza’s successive petition was filed October 4, 2012, almost 19 years following the 1994 filing of the remittitur following the dismissal of his original appeal.

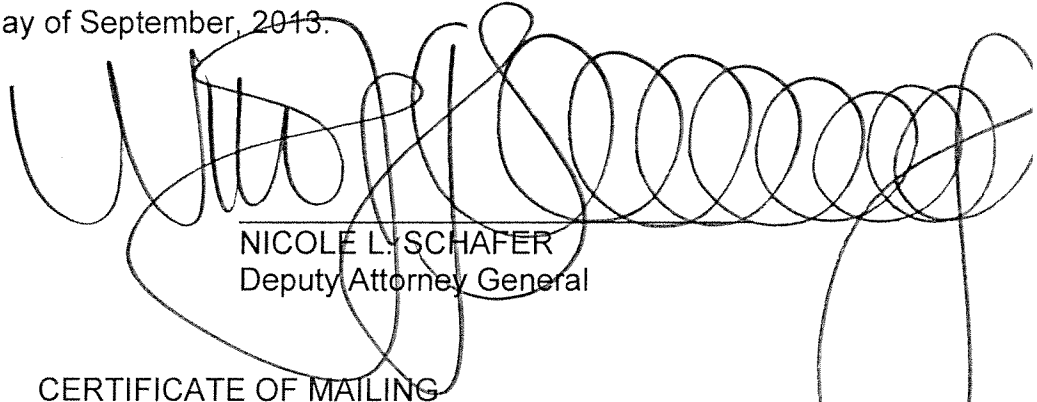
Mendoza does not argue that his claims were not known to him or could not reasonably have been known to him in the requisite time-frame for filing his initial post-conviction petition. Instead, Mendoza claims he is entitled to the tolling of the time limit for filing set by state statute by virtue of a United States Supreme Court case addressing the filing of habeas corpus petitions. (See Appellant's brief, pp.5-8.) In Murray v. Carrier, 477 U.S. 478 (1986), the Court held that state procedural default of claims is binding in federal habeas corpus proceedings absent a showing of cause and prejudice, which must, at a minimum, rise to the level of being caused by factors external to the defense or ineffective assistance of counsel. Mendoza does not cite any controlling state cases addressing the statute controlling actions pursued under the UPCPA or for his position that he is entitled to tolling of the time limit in which to file a successive petition for post-conviction relief. Mendoza further asserts trial counsel's mistakes at trial violated his sixth and fourteenth amendment rights "which caused the conviction of an innocent person and thus raise a valid claim for equitable tolling." (Appellant's brief, p.8.) However, Mendoza again fails to even allege a basis for the tolling of time pursuant to statute, let alone show cause why such claim was not known to him or could not reasonably have been known to him in the requisite time-frame for filing his initial post-conviction petition.

Because Mendoza failed to justify the untimely filing of his petition, he has failed to show that the district court erred in dismissing his successive petition for post-conviction relief filed some 19 years after his original conviction.

CONCLUSION

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

DATED this 4th day of September, 2013.

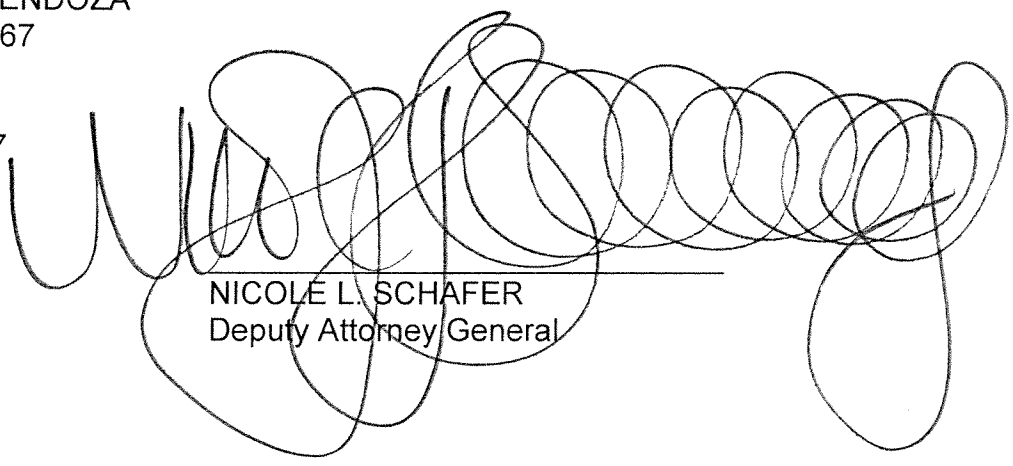


NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of September, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

PABLO MERAZ-MENDOZA
INMATE NO. 38267
ICC, Unit B-218-B
PO Box 70010
Boise, Idaho 83707



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm