

4-23-2014

Nichols v. State Respondent's Brief Dckt. 40798

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Nichols v. State Respondent's Brief Dckt. 40798" (2014). *Not Reported*. 1337.
https://digitalcommons.law.uidaho.edu/not_reported/1337

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

RAY M. NICHOLS,)	
)	No. 40798
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-19714
)	
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 MELISSA MOODY
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

RAY M. NICHOLS
IDOC #36258
ISCI – Unit 9
PO Box 14
Boise, ID 83707

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

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

FILED - COPY

APR 23 2014

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

ATTORNEYS FOR
RESPONDENT

PRO SE
PETITIONER-APPELLANT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of Facts And Course Of Proceedings.....	1
ISSUE	3
ARGUMENT	4
Nichols Has Failed To Show The District Court Erred When It Dismissed His Petition For Post-Conviction Relief.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. Nichols' Post-Conviction Petition Was Untimely	5
CONCLUSION	8
CERTIFICATE OF MAILING.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Charboneau v. State</u> , 144 Idaho 900, 174 P.3d 870 (2007).....	5
<u>Evensiosky v. State</u> , 136 Idaho 189, 30 P.3d 967 (2001)	5
<u>Gilpin-Grubb v. State</u> , 138 Idaho 76, 57 P.3d 787 (2002)	4
<u>Martinez v. Ryan</u> , 132 S.Ct. 1309 (2012).....	7, 8
<u>Rhoades v. State</u> , 148 Idaho 247, 220 P.3d 1066 (2009).....	5
<u>Sayas v. State</u> , 139 Idaho 957, 88 P.3d 776 (Ct. App. 2003)	5
<u>State v. Armstrong</u> , 146 Idaho 372, 195 P.3d 731 (Ct. App. 2008).....	6
<u>State v. Mireles</u> , 133 Idaho 690, 991 P.2d 878 (Ct. App. 1999).....	7
<u>State v. Nichols</u> , 124 Idaho 651, 862 P.2d 343 (Ct. App. 1993).....	1, 6
<u>State v. Nichols</u> , 2013 Unpublished Opinion No. 807, Docket No. 40830 (Idaho App. December 31, 2013)	1, 2, 6
<u>State v. Rhoades</u> , 134 Idaho 862, 11 P.3d 481 (2000)	7
<u>State v. Rogers</u> , 140 Idaho 223, 91 P.3d 1127 (2004).....	6
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007).....	4
 <u>STATUTES</u>	
I.C. § 19-4901	7
I.C. § 19-4902	2, 4, 5, 6

STATEMENT OF THE CASE

Nature Of The Case

Ray M. Nichols appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Statement Of Facts And Course Of Proceedings

In 1992, Nichols robbed a Boise bank after threatening to shoot a bank teller. See State v. Nichols, 124 Idaho 651, 653, 862 P.2d 343, 345 (Ct. App. 1993). Nichols was arrested shortly thereafter and confessed to both the Boise robbery and a similar bank robbery in Fairbanks, Alaska, committed 13 days earlier. Id. Nichols was charged with and found guilty by a jury of robbery and second-degree burglary. Id. The district court imposed a fixed life sentence for robbery. (Idaho Data Repository, Ada County, Case No. CR 0000-18674.) Nichols did not challenge this sentence on appeal. See generally Nichols, 124 Idaho 651, 862 P.2d 343.

On October 26, 2012, Nichols filed a *pro se* petition for post-conviction relief. (R., pp.4-12.) In the petition, Nichols raised thirteen claims, including ineffective assistance of trial and appellate counsel. (Id.) He also alleged that the sentencing court "lacked subject matter jurisdiction to impose a fixed life sentence for the crime of robbery." (Id.) The district appointed counsel to represent Nichols on the petition. (R., pp.16-18.)

While the post-conviction case was pending, Nichols filed a *pro se* I.C.R. 35(a) motion to correct an illegal sentence. (See R., p.50 n.2; State v. Nichols, 2013 Unpublished Opinion No. 807, Docket No. 40830 (Idaho App. December

31, 2013).) In the motion, Nichols made the same argument he made in his post-conviction petition - that his fixed life sentence for robbery was illegal under Idaho law. See Nichols, 2013 Unpublished Opinion No. 807. The district court denied the motion, and the Idaho Court of Appeals affirmed.¹ Id.

On November 9, 2012, the district court entered a notice of intent to dismiss Nichols' petition on the ground that it was untimely pursuant to I.C. § 19-4902(a). (R., pp.19-22.) The court granted Nichols 20 days to respond to the proposed dismissal. (Id.) On November 19, 2012, Nichols filed a *pro se* response, in which he argued the merits of his petition, and asserted that he was entitled to raise a subject matter jurisdiction challenge to his sentence "at any time." (R., pp.23-30.) Nichols' counsel did not file an amended petition or other substantive response to the court's notice of intent to dismiss. On February 26, 2013, the district court summarily dismissed the petition. (R., pp.54-58.) Nichols timely appealed. (R., pp.59-62.)

¹ The Idaho Supreme Court denied Nichols' request to consolidate the present appeal (#40798) with his appeal from the district court's order denying his I.C.R. 35(a) motion to correct an illegal sentence (#40830). (11/15/13 Order.)

ISSUE

Nichols states the issue on appeal as:

Did the District Court Err When It Dismissed The Petition For Post[-]Conviction Relief?

(Appellant's brief, p.1 (capitalization in original).)

The state rephrases the issue on appeal as:

Has Nichols failed to show the district court erred when it dismissed his petition for post-conviction relief?

ARGUMENT

Nichols Has Failed To Show The District Court Erred When It Dismissed His Petition For Post-Conviction Relief

A. Introduction

Nichols contends that the district court erred in summarily dismissing his post-conviction petition. (See generally Appellant's brief.) Specifically, Nichols argues that his challenge to his sentence was one of subject matter jurisdiction which may be raised "at any time." (Id.) Nichols' argument fails for several reasons. First, Nichols' challenge to the legality of his sentence does not implicate the court's subject matter jurisdiction. Nichols' petition, filed approximately 19 years after the Idaho Court of Appeals affirmed his underlying conviction, is plainly untimely pursuant to Idaho Code § 19-4902(a). Further, even if Nichols' petition was timely, his claim would be precluded by waiver and the doctrine of *res judicata*.

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. Nichols' Post-Conviction Petition Was 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 of the post-conviction statute of limitations 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)).

In this case, the district court dismissed Nichols’ petition for post-conviction relief as untimely pursuant to I.C. § 19-4902(a). (R., pp.19-22, 54-58.) The record supports the district court’s determination. Nichols filed his post-conviction petition on October 26, 2012 – almost 19 years after the Idaho Court

of Appeals affirmed his convictions for robbery and second-degree burglary. See Nichols, 124 Idaho 651, 862 P.2d 343. Nichols failed to allege, either below or on appeal, any of the foregoing bases (or any basis at all) for equitable tolling. Instead, Nichols attempts to bypass the I.C. § 19-4902(a) statute of limitations by characterizing the challenge to his sentence as one of “subject matter jurisdiction,” which may be raised at any time. (Appellant’s brief, p.2. (citations omitted).) Nichols’ argument fails for several reasons.

First, Nichols’ attempt to characterize his illegal sentence claim as one of “subject matter jurisdiction” is misguided. Nichols has cited no authority for his proposition that a challenge to the legality of a sentence implicates a court’s subject matter jurisdiction. To the contrary, subject matter jurisdiction “does not depend on the correctness of any decision made by the court,” but instead refers to “the power to hear and determine cases.” State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004); see also State v. Armstrong, 146 Idaho 372, 375, 195 P.3d 731, 734 (Ct. App. 2008) (“[c]ourts and lawyers sometimes say that a court lacked jurisdiction when they really mean simply that the court committed error because the action that was taken did not comply with governing law.”). In this case, Nichols has not raised an issue of subject matter jurisdiction that may be raised “at any time”.

Certainly, a court may correct a sentence that is illegal from the face of the record at any time pursuant to I.C.R. 35(a). Nichols, in fact, made such a motion, which contained the same argument he makes here – that his fixed life sentence for robbery is contrary to Idaho law. See Nichols, 2013 Unpublished Opinion No.

807. In affirming the district court's denial of that motion, the Idaho Court of Appeals rejected this claim on its merits. Id. Thus, even if Nichols' post-conviction petition was timely, his illegal sentence complaint would be barred by the doctrine of *res judicata*.² See State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000) ("the doctrine of *res judicata* holds that 'in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies...as to every matter offered and received to sustain or defeat the claim....'" (citations omitted)).

Further, a post-conviction petition is not a substitute for a direct appeal, and any issue which could have been raised on direct appeal, but was not, is forfeited. I.C. § 19-4901(b). While a defendant may utilize I.C.R. 35(a) to challenge the legality of his sentence at "any time," the Uniform Post-Conviction Procedure Act contains no such provision. Even if his petition was timely, Nichols thus waived his post-conviction illegal sentence claim by failing to raise it on direct appeal.

Finally, Nichols cites Martinez v. Ryan, 132 S.Ct. 1309 (2012) for the apparent proposition that ineffective assistance of counsel excused the untimeliness of his post-conviction petition. (Appellant's brief, pp.10-12.) Even if Nichols could somehow demonstrate that his post-conviction petition was approximately 18 years late because of ineffective assistance of counsel, his reliance on Martinez is misguided. In Martinez, the United States Supreme Court

² While the district court did not reference *res judicata*, a district court's correct result may be affirmed on any correct theory. State v. Mireles, 133 Idaho 690, 694, 991 P.2d 878, 882 (Ct. App. 1999).

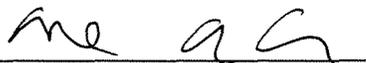
held that a federal court may excuse the *procedural default* of an ineffective assistance of trial counsel claim where post-conviction counsel was ineffective in pursuing the claim in state post-conviction proceedings. Id. at 1320. Martinez thus applies to procedurally defaulted claims in federal habeas corpus petitions, and has no application to Idaho post-conviction proceedings. Nichols has failed to demonstrate, or even allege, he is entitled to equitable tolling under state law.

Nichols' post-conviction petition, filed almost 19 years after the Idaho Court of Appeals affirmed his underlying conviction, was untimely. He has therefore failed to show that the district court erred by summarily dismissing his petition.

CONCLUSION

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

DATED this 24th day of April, 2014.

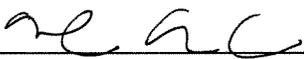


MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of April 2014, I caused two true and correct copies of the foregoing RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to:

Ray M. Nichols, #36258
I.S.C.I., Unit 9
Post Office Box 14
Boise, ID 83707



Mark W. Olson
Deputy Attorney General

MWO/pm