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Brennan v. State Respondent's Brief Dckt. 40831

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

PETER BRENNAN,)	
)	No. 40831
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-9307
)	
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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Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

PRO SE
PETITIONER-APPELLANT

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RULES

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STATEMENT OF THE CASE

Nature of the Case

Peter Brennan, *pro se*¹, 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The underlying facts of this case have been outlined by the Court of Appeals in Brennan v. State, 2012 Unpublished Opinion No. 767 (Idaho App. Dec. 21, 2012):

Brennan pled guilty to one count of lewd conduct with a minor under sixteen. Idaho Code § 18-1508. An amended judgment of conviction was entered on June 30, 2009, to correct a clerical mistake in the original judgment. Brennan subsequently filed a Rule 35 motion for reduction of sentence, which the district court denied. Brennan did not appeal his original sentence or the denial of his Rule 35 motion. On September 15, 2011, Brennan filed a petition for post-conviction relief, which was filed within one year of the denial of his Rule 35 motion, but more than two years after the entry of the amended judgment of conviction. Brennan's post-conviction petition contained ineffective assistance of counsel claims related to failure to file a suppression motion based upon asserted *Miranda* violations and use of a psychosexual evaluation at sentencing. The district court entered a notice of intent to dismiss the petition, on the ground that the petition was untimely and lacking any basis for equitable tolling of the one-year period for filing the petition under I.C. § 19-4902. Brennan responded to the court's notice of intent to dismiss, stating there was no time limit on a successive petition for post-conviction relief. While Brennan labeled his petition for post-conviction relief "successive," it was the

¹ Although counsel was originally appointed to represent Brennan in this appeal, the Court granted the SAPD's motion to withdraw. (10/16/13 Order Granting Motion for Leave to Withdraw and to Suspend Briefing Schedule.) The SAPD's request to withdraw as counsel was made following "a thorough review" by three separate attorneys of the appellate record in this case who concluded "that the appeal failed to present any meritorious issues for review, rendering the appeal frivolous." (9/12/13 Affidavit in Support of Motion for Leave to Withdraw and Motion to Suspend the Briefing Schedule, p.2.)

first petition for post-conviction relief, again stating the petition was untimely and that no ground for equitable tolling had been asserted.

*1, 2 (footnote omitted).

The district court's order summarily dismissing Brennan's petition as being untimely filed was affirmed on appeal. Id. at *5.

Statement of the Facts and Course of Successive Post-Conviction Proceedings

Brennan filed a *pro se* successive petition for post-conviction relief in May of 2012. (R., pp.5-9.) In it, Brennan asserted ineffective assistance of counsel for failure to inform him of the denial of his Rule 35 notice and failure to file a petition for post-petition relief. (R., p.6.) The state filed an answer to Brennan's successive petition for post-conviction relief and a motion for summary dismissal because "the court is not permitted to equitably toll the statute based on the record." (R., p.32.)

The district court appointed post-conviction counsel and an amended successive petition for post-conviction relief was filed alleging ineffective assistance of counsel for failure to file a petition for post-conviction relief. (R., pp.40-42, 60-66.) The state filed an answer and motion for summary dismissal of the amended successive petition for post-conviction relief. (R., pp.67-70.) Brennan objected to the state's motion for summary dismissal (R., pp.94-99), to which the state filed a reply asserting Brennan failed to articulate any basis for equitable tolling of the time in which to file his successive petition for post-conviction relief. (R., pp.100-101).

Following a hearing on the motion for summary dismissal, the court took the matter under advisement, ultimately issuing a written memorandum decision and order summarily dismissing Brennan's successive petition for post-conviction relief. (R., pp.103-107.)

Brennan timely appealed from the dismissal of his successive petition for post-conviction relief. (R., pp.110-113.)

ISSUE

Brennan states the issue on appeal as:

Did the District Court error [sic] by not tolling Mr. Brennan's limitations period for fairness reasons, a concept known as equitable tolling?

(Appellant's brief, p.3.)

The state rephrases the issue on appeal as:

Has Brennan failed to establish the district court erred in summarily dismissing his successive petition for post-conviction relief?

ARGUMENT

Brennan Has Failed To Show Error In The Summary Dismissal Of His Successive Petition For Post-Conviction Relief

A. Introduction

The district court summarily dismissed Brennan's successive petition for post-conviction relief after concluding Brennan had failed to demonstrate a sufficient basis for the equitable tolling of his successive petition for post-conviction relief claims. (R., p.5.) On appeal, Brennan asserts he was entitled to the equitable tolling of the time period in which to file his petition for post-conviction relief. (See generally, Appellant's brief.) Brennan has failed to establish a valid basis for the equitable tolling of the time in which to file his petition for post-conviction relief and has therefore failed to show error in the district court's dismissal of his successive petition for post-conviction relief.

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 Brennan's Successive Petition For Post-Conviction Relief Was Appropriate Because It Was Untimely Filed And Brennan Failed To Allege Facts That, If True, Would Toll Application Of The Statute Of Limitations

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 disposition of an application for post-conviction relief when the applicant's evidence has raised no genuine issue of material fact, which if resolved in the applicant's favor, would entitle the applicant to the requested relief. Downing v. State, 132 Idaho 861, 863, 979

P.2d 1219, 1221 (Ct. App. 1999); Martinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 491 (Ct. App. 1995). Pursuant to I.C. § 19-4906(c), a district court may dismiss a post-conviction application on the motion of any party when it appears that the applicant is not entitled to relief. Specifically, I.C. § 19-4906(c) provides:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Applying these principles in this case, the district court summarily dismissed Brennan'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." In the case of successive petitions, the Idaho Supreme Court has "recognized that rigid application of I.C. § 19-4902 would preclude courts from considering 'claims which simply are 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 those circumstances, the court will apply a "reasonable time" standard. Rhoades, 148 Idaho at 251, 220 P.3d at 1070. "In determining what a reasonable time is for filing a successive petition, [the court] will simply consider it on a case-by-case basis, as has been done in capital cases."

Charboneau, 144 Idaho at 905, 174 P.3d at 875. However, absent a showing by the petitioner that the limitation period should be tolled, the failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Rhoades, 148 Idaho at 247, 220 P.3d at 1066.

The district court correctly concluded Brennan failed to establish that the claims in his successive petition for post-conviction relief were raised in a reasonable period of time after he became aware of them:

The Court cannot conclude that Petitioner brought his claims related to Mr. Sutton's representation of him within a reasonable time after such claims were known to Petitioner. Petitioner asserts that he became aware of Mr. Sutton's failure to file a petition for post-conviction relief on his behalf in January of 2011. Petitioner did not file his Petition and Affidavit for Post Conviction Relief in the case at bar until May 23, 2012, approximately sixteen months after he discovered the facts giving rise to his ineffective assistance of counsel claim against Mr. Sutton. While the issue of whether a successive petition has been filed within a reasonable time should be determined on a case-by-case basis, the Court notes that Idaho appellate courts have generally concluded that a delay of over one year is unreasonable, especially where the petitioner fails to provide a sufficient reason for the delay. Petitioner has not provided a sufficient reason for the delay of approximately sixteen months between the time he discovered Mr. Sutton's actions and the time he filed the petition in the case at bar.

(R., p.106 (citations to the record and case citation omitted).)

Brennan unsuccessfully claims on appeal he is entitled to the benefit of the "relation back or equitable tolling" doctrines. (See generally Appellant's brief.) 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 v. State, 139 Idaho 957, 960, 88 P.3d 776, 779 (Ct. App. 2003). (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)). Brennan 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.) As the district court found in concluding Brennan had “effectively waived his claims related to Mr. Sutton”:

the facts underlying Petitioner’s claims related to Mr. Sutton were discovered by Petitioner well before he filed his first petition for post-conviction relief. Such claims were not raised by Petitioner in his first petition, nor were they raised as a basis for equitable tolling as to the timeliness of the first petition. Petitioner has not demonstrated sufficient reason why the issues raised in his successive petition could not have been raised in the first petition.

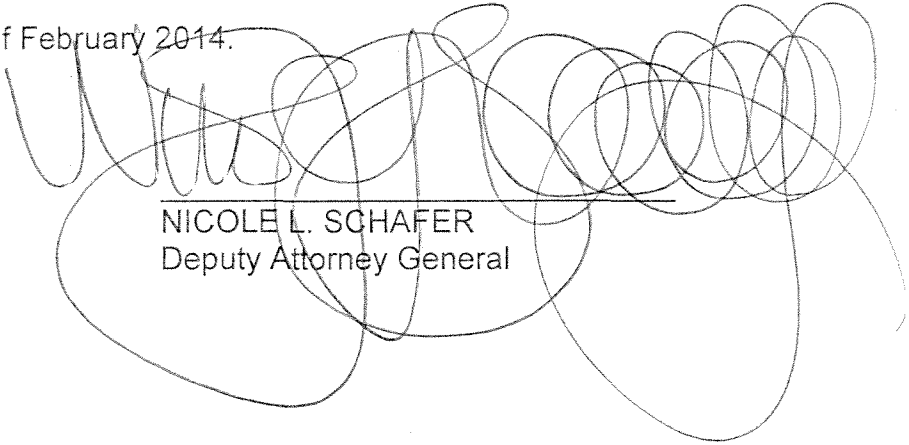
(R., p.107.)

The district court correctly dismissed Brennan’s successive petition for post-conviction relief on the ground that it did not meet the statutory requirements for a permissible successive petition under I.C. § 19-4908.

CONCLUSION

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

DATED this 18th day of February 2014.

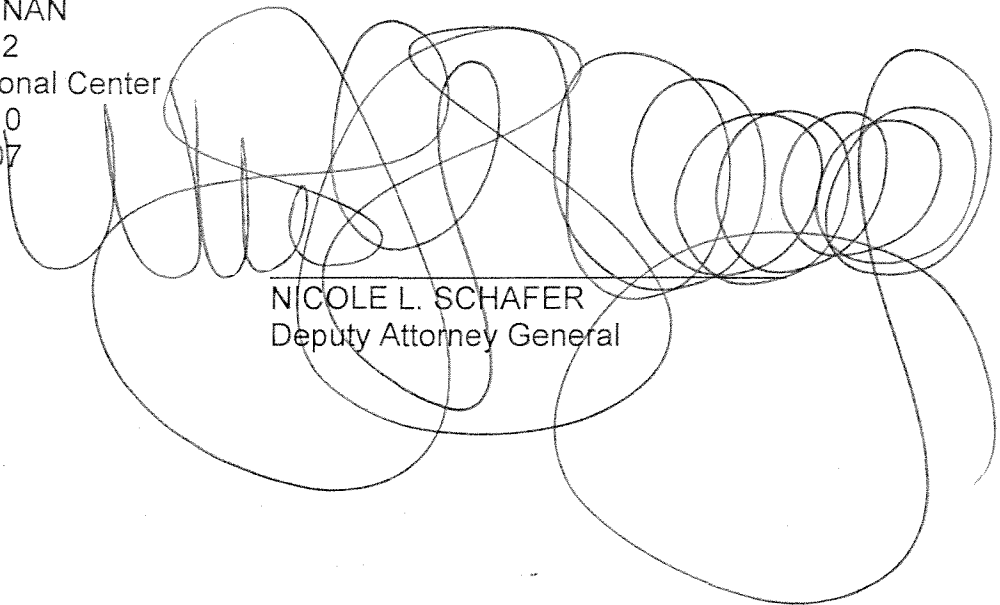


NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of February 2014, I caused two true and correct copies of the foregoing REPLY BRIEF to be placed in the United States mail, postage prepaid, addressed to:

PETER BRENNAN
Inmate # 93142
Idaho Correctional Center
P.O. Box 70010
Boise, ID 83707



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm