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Lyneis v. State Appellant's Reply Brief Dckt. 40919

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SCOTT ALEXANDER LYNEIS,)	
)	NO. 40919
Petitioner-Appellant,)	
v.)	CANYON COUNTY NO. CV 2011-4804
)	
STATE OF IDAHO,)	APPELLANT'S
)	REPLY BRIEF
Respondent.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

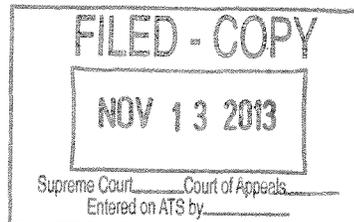
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Rule 35	4, 5, 6, 7
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STATEMENT OF THE CASE

Nature of the Case

Scott Alexander Lyneis pleaded guilty to two counts of felony possession of sexually exploitative material. The district court imposed a unified sentence of ten years, with two years fixed. Mr. Lyneis did not appeal from the judgment of conviction.

Mr. Lyneis subsequently initiated the present post-conviction proceeding. The district court rejected his asserted grounds for post-conviction relief, which included the ineffective assistance of his trial counsel, and summarily dismissed the post-conviction petition.

Mr. Lyneis appealed, asserting that the district court erred in summarily dismissing his post-conviction petition because he presented *prima facie* evidence of ineffective assistance of counsel.

In its Respondent's Brief, the State argued that Mr. Lyneis did not show that the district court erred in summarily dismissing his post-conviction petition, because he received an appeal of his sentence through his appeal of the denial of his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion, and thus he did not assert a *prima facie* claim that his trial counsel was ineffective for failing to file a notice of appeal to challenge his sentence. (Resp. Br., pp.3-5.)

This Reply Brief is necessary to address the State's argument that Mr. Lyneis received an appeal of his sentence. The State's argument that Mr. Lyneis received an appeal of his sentence fails, because an appeal from the denial of a Rule 35 motion is separate and distinct from an appeal of a sentence. Thus, Mr. Lyneis's appeal from the denial of his Rule 35 motion does not constitute an appeal of his sentence. While

Mr. Lyneis challenges the State's broader contention that he has not shown error in the summary dismissal of his post-conviction petition, he relies upon the arguments in his Appellant's Brief and will not repeat those arguments herein.

Statement of the Facts and Course of Proceedings

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

ISSUE

Did the district court err when it summarily dismissed Mr. Lyneis's petition for post-conviction relief?

ARGUMENT

The District Court Erred When It Summarily Dismissed Mr. Lyneis's Petition For Post-Conviction Relief, Because Mr. Lyneis Presented *Prima Facie* Evidence Of Ineffective Assistance Of Counsel

Mr. Lyneis asserts that the district court erred when it summarily dismissed his petition for post-conviction relief, because he presented *prima facie* evidence of ineffective assistance of counsel. Because Mr. Lyneis stated in the affidavit accompanying his amended petition that his trial counsel failed to file an appeal despite Mr. Lyneis's request for an appeal, a genuine issue of material fact exists both as to whether Mr. Lyneis's trial counsel's performance was deficient, and as to whether that deficiency prejudiced Mr. Lyneis's case.

The State argues that "because counsel filed an appeal in which the sentence was challenged, [Mr.] Lyneis failed to assert a prima facie claim that counsel failed to file a notice of appeal to challenge his sentence." (Resp. Br., p.3.) Mr. Lyneis asserts that the State has failed to show that he received an appeal of his sentence. The State's argument that Mr. Lyneis received an appeal of his sentence fails, because an appeal from the denial of an Idaho Criminal Rule 35 motion is separate and distinct from an appeal of a sentence.

Under the two-part *Strickland* test, "[t]o prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency." *Booth v. State*, 151 Idaho 612, 617 (2011) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *McKeeth v. State*, 140 Idaho 847, 850 (2004)). To establish a deficiency, the defendant must show that the attorney's performance fell below an objective standard of reasonableness.

McKay v. State, 148 Idaho 567, 571 (2010). To establish prejudice, the defendant must show a reasonable probability that the outcome of the trial would have been different but for the attorney's deficient performance. *Id.*

The *Strickland* test applies to claims "that counsel was constitutionally ineffective for failing to file a notice of appeal." *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000). As the State acknowledges (Resp. Br., p.4), "a defendant who proves that he or she was denied an appeal because counsel did not file an appeal as requested states a meritorious claim for ineffective assistance of counsel because the loss of the right to appeal is sufficient prejudice, in and of itself, to support such claim." *Gosch v. State*, 154 Idaho 71, ___, 294 P.3d 197, 200 (Ct. App. 2012).

The State contends that, "unlike the petitioner in *Gosch*, [Mr.] Lyneis received the appeal he requested." (Resp. Br., p.5.) According to the State, because Mr. Lyneis appealed the district court's denial of his Rule 35 motion and the Idaho Court of Appeals affirmed the denial, he "received what he now claims he was denied: an appeal 'of [his] sentence.'" (Resp. Br., p.5 (alteration in original).) The State further argues: "Consequently, the record disproves any deficient performance or prejudice resulting from counsel's actions, and a presumption of prejudice for not filing any appeal is not warranted under the facts of this case." (Resp. Br., p.5.)

The State's argument that Mr. Lyneis received an appeal of his sentence fails, because an appeal from the denial of a Rule 35 motion is separate and distinct from an appeal of a sentence. Contrary to the State's argument that Mr. Lyneis's appeal from the denial of his Rule 35 motion also constitutes an appeal of his sentence, Idaho's appellate courts have consistently treated an appeal from the denial of a Rule 35 motion

and an appeal of a sentence as separate and distinct issues on appeal. *E.g.*, *State v. Adair*, 145 Idaho 514, 516 (2008) (“This Court will not use a Rule 35 motion as a vehicle to review the underlying sentence absent the presentation of new evidence. It is assumed that the original sentence was within the trial court’s sentencing discretion unless the defendant appeals the original sentence.”); *State v. Huffman*, 144 Idaho 201, 203 (2007) (“Rule 35 does not function as an appeal of a sentence. . . . An appeal from the denial of a Rule 35 motion cannot be used to review the underlying sentence absent the presentation of new information. As such, because Huffman only appeals the denial of his Rule 35 motion, his request to change the standard of review of an appeal of a sentence is not properly before this Court.”); *State v. Tranmer*, 135 Idaho 614, 617 n.4 (Ct. App. 2001) (“[T]he proper procedure when a defendant seeks both a direct appeal of the underlying sentence and a Rule 35 motion is for the district court to rule on the Rule 35 motion and have its appeal consolidated with appeal of the underlying sentence.”).

Mr. Lyneis’s appeal from the denial of his Rule 35 motion does not constitute an appeal of his sentence. Upon appellate review of a Rule 35 motion such as Mr. Lyneis’s motion, “[i]t is assumed that the original sentence was within the trial court’s sentencing discretion unless the defendant appeals the original sentence.” *Adair*, 145 Idaho at 516. Further, if a defendant like Mr. Lyneis only appeals the denial of his Rule 35 motion, an appellate court will not address any issues related to the appeal of a sentence. *See Huffman*, 144 Idaho at 203. Mr. Lyneis only appealed “from the denial of his Rule 35 motion,” and the Court of Appeals only affirmed the order denying the Rule 35 motion. *State v. Lyneis*, No. 38365, 2011 Unpublished Opinion No.

594 (Idaho Ct. App. Aug. 29, 2011) (per curiam). Mr. Lyneis's appeal from the denial of his Rule 35 motion therefore does not constitute an appeal of his sentence. Thus, the State has failed to show that Mr. Lyneis received an appeal of his sentence.

CONCLUSION

Mr. Lyneis respectfully requests that this Court vacate the summary dismissal of his post-conviction petition with respect to his ineffective assistance of counsel claim, and remand the case to the district court for an evidentiary hearing.

DATED this 13th day of November, 2013.

A handwritten signature in black ink, appearing to read 'BP McGreevy', written over a horizontal line.

BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of November, 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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BOISE ID 83706

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DISTRICT COURT JUDGE
E-MAILED BRIEF

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BPM/eas