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State v. Smith Respondent's Brief Dckt. 40947

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,
Plaintiff-Respondent,
vs.
DANA LYDELL SMITH,
Defendant-Appellant.

No. 40947
Minidoka Co. Case No.
CR-2004-2628

BRIEF OF RESPONDENT

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

HONORABLE MICHAEL R. CRABTREE
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Dana Lydell Smith appeals from the district court's order denying his fifth motion for a new trial. On appeal he challenges only the district court's denial of his request for counsel.

Statement of the Facts and Course of the Proceedings

Smith was charged and convicted of grand theft after a trial. State v. Smith, 2009 Unpublished Opinion No. 467, Docket Nos. 35216 & 35604 (Idaho App., May 20, 2009). The Idaho Court of Appeals affirmed Smith's judgment of conviction in an opinion issued May 20, 2009. Id. Smith filed for post-conviction relief, but his petition was dismissed. Smith v. State, 2011 Unpublished Opinion No. 699, Docket No. 37819 (Idaho App., November 14, 2011). The dismissal was affirmed on appeal. Id.

"On September 3, 2010, Smith filed a motion for a *Faretta* hearing, requesting a competency hearing to determine if he could proceed on the criminal case by representing himself." State v. Smith, 2011 Unpublished Opinion No. 715, Docket No. 38197, p. 2 (Idaho App., November 21, 2011). "On September 14, 2010, Smith also filed a motion to alter or amend a judgment" Id. The district court's denial of these motions was affirmed by the Idaho Court of Appeals. Id.

"On January 19, 2012, Smith filed a pro se motion for a new trial on the basis of newly discovered evidence." State v. Smith, 2013 Opinion No. 19, Docket No. 39704, p. 1 (Idaho App., March 28, 2013). "Smith's motion was

based on an assertion that he was mentally incompetent when he was tried for grand theft and that the district court erred in failing to sua sponte order a competency evaluation.” Id. at p. 1 n. 1. This motion was properly denied as it was brought more than two years after final judgment, and therefore it was untimely and the trial court lacked jurisdiction to consider it. Id. at pp. 2-3.

On March 11, 2013, Smith filed the current motion for a new trial. (R., pp. 6-7.) The ground for the instant motion was “the district court’s failure to hold a psychiatric examination based on the questions raised by previous evaluations.” (R., p. 6.¹) Smith contended he was entitled to such an evaluation because his “psychiatric witness was excluded and his testimony, statute requires that the court order sua sponte another evaluation.” (Id.) Smith also contended the failure to order an evaluation “tolled” the “statutory time limit” to file his motion. (Id.; see also R., pp. 8-14.) The relief he requested was to “immediately order a psychiatric evaluation and immediately set aside the conviction.” (R., p. 7.) Smith also filed a motion for appointment of counsel. (Augmentation.)

The district court ordered briefing on the issue of its jurisdiction to consider the new motion for a new trial. (Order Re Motion for New Trial (Augmentation).) Both Smith and the state filed briefing in response to the court’s order. (Augmentation.) Concluding that it lacked jurisdiction, the district court denied both the motion for a new trial and the motion for appointment of counsel. (R., pp. 49-50.) Smith filed a timely notice of appeal from the order. (R., pp. 52-55.)

¹ Punctuation, capitalization, and spelling have been altered in quotes from Smith’s pleadings.

ISSUE

Smith states the issue on appeal as:

Did the court err in denying Mr. Smith's motion for appointment of counsel in light of the non-frivolous constitutional tolling argument made by him?

(Appellant's brief, p. 7.)

The state rephrases the issue as:

Has Smith failed to show that the district court abused its discretion by denying Smith's motion to appoint counsel to represent him on his untimely new trial motion?

ARGUMENT

Smith Has Failed To Show That The District Court Abused Its Discretion By Denying Smith's Request For Counsel To Represent Him On His Untimely New Trial Motion

A. Introduction

Smith contends the district court erred in denying him counsel because he asserted a viable claim that the limitation period should have been tolled because he has a mental disease and was taking prescribed psychotropic medication. (Appellant's brief, pp. 9-12.) Review of the record shows no basis for a claim that Smith was incompetent to pursue his right to access the court during the four years at issue. Smith's motion for a new trial was therefore not timely, and pursuing it would have been frivolous. Because the motion was frivolous, the trial court did not abuse its discretion by denying the request for counsel.

B. Standard Of Review

Denial of court appointed counsel under I.C. § 19-852(b)(3) is "within the court's discretion" as long as "the court appropriately finds that the claims presented are frivolous." Swisher v. State, 129 Idaho 467, 468-69, 926 P.2d 1314, 1315-16 (Ct. App. 1996).

C. Smith Presented No Evidence And No Allegation That He Was Incapable Of Pursuing His Rights In Court During The Four Years Between The Remittitur And The Filing Of The Instant Motion

A criminal defendant has the statutory right to counsel in "post-conviction or post-commitment proceedings" unless the court determines that the proceeding is "not a proceeding that a reasonable person with adequate means

would be willing to bring at his own expense and is therefore a frivolous proceeding.” I.C. § 19-852(b)(3).² The district court determined that Smith’s motion for new trial was a frivolous proceeding because the court lacked jurisdiction to consider it. (R., pp. 49-50.) This determination is supported by the law and the record.

“Absent a statute or rule extending its jurisdiction, the trial court’s jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.” State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003). “A motion for a new trial based upon the ground of newly discovered evidence may be made only before or within two (2) years after final judgment.” I.C.R. 34.³ The Idaho Court of Appeals entered its remittitur in the appeal from the judgment in this case on June 17, 2009, and thus the judgment became final on that date. Smith, 2013 Opinion No. 19, at p. 2. Rule 34 extended the jurisdiction of the court to consider a motion for a new trial based on a claim of newly discovered evidence for two years, to June 17, 2011. Smith filed the motion at issue on March 11, 2013 (R., p. 6), almost four years after the judgment became final. The district court lacked jurisdiction because the motion

² Idaho Code section 19-852 was amended and its subsection renumbered effective July 1, 2013. The language relevant to this case is the same but now appears at I.C. § 19-852(2)(c). The numbering in place at the time of the district court’s order is used in this brief.

³ Smith’s claim he was incompetent at trial cannot reasonably be framed as being based on newly discovered evidence. (R., pp. 6-7.) Nevertheless, because the district court applied the two-year limitation period without addressing whether it was actually applicable, the state will address the motion as if it were based on newly discovered evidence.

was filed well beyond the time the court's jurisdiction to consider the motion expired.

Smith contends he asserted a viable issue as to whether he was incompetent, and thus the period to file the new trial motion was tolled, which issue required appointment of counsel. He argues that the tolling standard applicable to actions under the Uniform Post Conviction Procedures Act ("UPCPA") should apply to new trial motions. (Appellant's brief, pp. 10-11.) Assuming the applicability of this standard, Smith has failed to show that he presented a non-frivolous claim that he was incapable of timely filing his motion for a new trial due to mental illness.

Generally, "equitable tolling" is available only where the petitioner shows that "extraordinary circumstances prevented him from filing his petition on time." Valverde v. Stinson, 224 F.3d 129, 133 (2nd Cir. 2000) (discussing equitable tolling theories in the context of federal habeas petitions); see Chico-Rodriguez v. State, 141 Idaho 579, 582, 114 P.3d 137, 140 (Ct. App. 2005) (discussing "extraordinary circumstances" and acknowledging "the bar for equitable tolling for post-conviction actions is high"). Idaho appellate courts have recognized that the one-year limitation period of I.C. § 19-4902 may be tolled if an applicant is prevented, either by mental disease or by being denied access to courts, from earlier pursuing challenges to his or her conviction. Sayas v. State, 139 Idaho 957, 960, 88 P.3d 776, 779 (Ct. App. 2003); Anderson v. State, 133 Idaho 788, 791, 992 P.2d 783, 786 (Ct. App. 1999). "A petitioner's due process right is not violated by a statute of limitation bar unless he can show such an inability to file a

timely petition that he was denied any meaningful opportunity to present his post-conviction claims.” Schultz v. State, 151 Idaho 383, 386, 256 P.3d 791, 794 (Ct. App. 2011).

The Idaho Court of Appeals has explained what a petitioner must show to prevail on a claim that he was denied a meaningful opportunity to present claims due to mental illness, such that the limitation period tolls:

We hold that in order for the statute of limitation under the UPCPA to be tolled on account of a mental illness, an unrepresented petitioner must show that he suffered from a serious mental illness which rendered him incompetent to understand his legal right to bring an action within a year or otherwise rendered him incapable of taking necessary steps to pursue that right. Equitable tolling will apply only during the period in which the petitioner's mental illness actually prevented him from filing a post-conviction action; any period following conviction during which the petitioner fails to meet the equitable tolling criteria will count toward the limitation period.

Chico-Rodriguez, 141 Idaho at 582, 114 P.3d at 140.

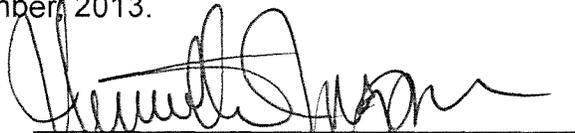
Although Smith presented a claim he was incompetent at trial, he specifically asserted that he was suffering from the same incompetency at the time of his current motion. (Memorandum of Law in Support of Response to Court Orders, at pp. 3-4 (Augmentation).) According to Smith, his current claim is the same incompetency claim he has been asserting since 2007. (Id., at pp. 1-2.) It is based on a mental illness he claims he has had since he was eight. (Id. at p. 5.) Furthermore, the record establishes that Smith was able to pursue an action in post-conviction and no less than three prior post-commitment motions (two of which were also based on claims of incompetency), all after the judgment in the criminal case became final.

There is no evidence in the record that Smith was not capable of pursuing his legal interests in the four years between the finality of the judgment and the filing of the current motion. He in fact filed a post-conviction petition and several motions in the criminal case. He asserts that he has had effectively the same mental illness (and same level of competence) for many years. Because there is no evidence or allegation that Smith was less competent in the four years preceding the filing of the current motion than he was at the time he filed it, any claim that Smith was prevented from filing his motion due to incapacity to meaningfully take advantage of his rights is frivolous. The district court therefore did not abuse its discretion in denying Smith's request for counsel.

CONCLUSION

The state respectfully requests this Court to affirm the order denying appointment of counsel to represent Smith on his untimely motion for a new trial.

DATED this 23rd day of September, 2013.



KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd 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:

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