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## Haas v. State Respondent's Brief Dckt. 40998

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JAMES TIMOTHY HAAS	)	
	)	No. 40998
Petitioner-Appellant,	)	
	)	Kootenai Co. Case No.
vs.	)	CV-2012-5259
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	

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BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN R. STEGNER  
District Judge

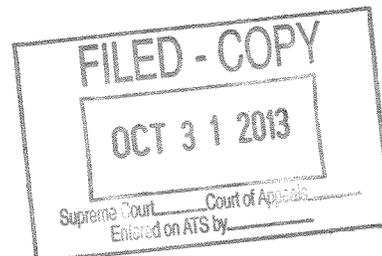
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## TABLE OF CONTENTS

	<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
ISSUES.....	4
ARGUMENT .....	5
Haas Has Failed To Show The District Court Erred In Summarily Dismissing Haas' Third Petition For Post-Conviction Relief.....	5
A.    Introduction.....	5
B.    Standard Of Review .....	5
C.    Haas Failed To Demonstrate Sufficient Reason Why He Did Not Assert Or Inadequately Raised His Third Petition's Claims In Prior Petitions.....	6
D.    Haas Failed To Preserve A Claim That His Sentence Was Excessive.....	9
E.    Even If Haas Could Overcome The Successive Petition Bar In I.C. § 19-4908, His Second Successive Petition Is Untimely.....	9
CONCLUSION .....	11
CERTIFICATE OF MAILING.....	11

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Charboneau v. State</u> , 144 Idaho 900, 174 P.3d 870 (2008) .....	6, 9, 10
<u>Dunlap v. State</u> , 141 Idaho 50, 106 P.3d 376 (2005) .....	9
<u>Gilpin-Grubb v. State</u> , 138 Idaho 76, 57 P.3d 787 (2002).....	6
<u>Hernandez v. State</u> , 133 Idaho 794, 992 P.2d 789 (Ct. App. 1999) .....	8
<u>Martinez v. Ryan</u> , 132 S.Ct. 1309 (2012).....	3, 7
<u>Palmer v. Dermitt</u> , 102 Idaho 591, 635 P.2d 955 (1981) .....	8
<u>Schwartz v. State</u> , 145 Idaho 186, 177 P.3d 400 (Ct. App. 2008) .....	10
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007) .....	5
 <u>STATUTES</u>	
I.C. § 19-4901 .....	9
I.C. § 19-4908 .....	passim

## STATEMENT OF THE CASE

### Nature of the Case

James Timothy Haas appeals from the district court's denial of his third petition for post-conviction relief.

### Statement of Facts and Course of Proceedings

A jury found Haas guilty of sexual battery of a minor child. (R., pp. 70-72.) The district court sentenced Haas to a unified 25-year sentence with nine years fixed. (R., p. 71.) Haas filed an Inmate Request form expressing his desire to appeal, and requesting assistance to do so. (R., p. 107.) Although this was forwarded to the Kootenai County Public Defender's Office, no appeal was filed. (R., p. 108.) Thereafter, Haas filed a Rule 35 motion, and later a (first) petition for post-conviction relief; the same counsel was appointed to represent Haas in both matters. (R., p. 108.)

The parties filed a stipulation in settlement of post-conviction relief, which included an agreement that Haas' Rule 35 motion would be determined on its merits following a hearing. (R., p. 108.) Based on the stipulation, the district court entered a conditional order dismissing Haas' post-conviction matter.<sup>1</sup> (R., p. 108.) Following the hearing on Haas' Rule 35 motion, the district court amended Haas' sentence to a unified term of 25 years with seven years fixed. (R., p. 109.)

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<sup>1</sup> The conditional order indicated that a final order dismissing Haas' first petition would be entered upon entry of the court's decision on Haas' Rule 35 motion. (R., pp. 108-09.) However, no final order was filed. (R., p. 109.)

Haas filed a second petition for post-conviction relief seven years later, asserting two claims: (1) that he received ineffective assistance of counsel because no appeal was filed on his behalf despite his timely request; and (2) that he was entitled to relief under two Idaho Supreme Court cases decided since his first post-conviction petition. (R., pp. 107, 113.) Counsel from Haas' first petition and Rule 35 motion was reappointed to represent him. (R., p. 109.) The district court conducted an evidentiary hearing and accepted additional briefing. (R., p. 110.) Thereafter, the district court entered a memorandum decision and order dismissing the petition. (R., pp. 107-19.)

In its order of dismissal, the district court addressed I.C. § 19-4908, which bars successive petitions absent a sufficient reason for adequately asserting claims in the original petition. (R., pp. 113, 119.) The district court found that Haas failed to demonstrate why his claims were inadequately raised in his first petition. (R., p. 119.) Noting that Haas stipulated to dismiss his first post-conviction petition, the district court also seemed to find that Haas waived his claim that counsel was ineffective for failing to appeal, to the extent such claim was raised therein. (R., pp.114-16.) In addition, the district court found that the cases relied on by Haas in his second post-conviction petition, which were decided after Haas was sentenced, did not apply retroactively or were otherwise inapplicable. (R., pp. 117-119.) Haas did not appeal.

Fifteen months later, Haas filed his third petition for post-conviction relief pro se. (R., pp. 4-14.) The petition asserted ineffective assistance of counsel claims concerning counsel's performances at trial, in failing to appeal, and in

relation to Haas' Rule 35 motion and initial post-conviction petition. (R., p. 5.) The district court issued a notice of intent to dismiss the petition as untimely, and gave Haas 40 days to respond. (R., pp. 64-68.) Haas responded, arguing that there is no time limitation for successive petitions, and that his ineffective assistance of counsel claims must be heard on their merits under Martinez v. Ryan, 132 S.Ct. 1309 (2012). (R., pp. 74-76.) The state replied, asserting the petition should be dismissed as barred under I.C. § 19-4908, and as res judicata. (R., pp. 77-78.) In a sur-reply, Haas again cited Martinez and attacked the state's reply as inadequate. (R., pp. 92-94.)

The district court entered an order dismissing Haas' third petition because Haas failed to provide a sufficient reason justifying a successive petition under I.C. § 19-4908, and entered a separate judgment. (R., pp. 97-101, 126.) Haas timely appealed. (R., pp. 121-26.)

## ISSUES

Haas states the issues on appeal as:

- (1) The appellant was denied effective counsel at trial, appeals and post-conviction under US Supreme Court *Martinez v Ryan* 6th Amendment Claims
- (2) Did counsel forgo post-conviction to reduce sentence which was not reduced knowing the commission would not release Appellant upon completion of his fix sentence? 5th and 6th Amendment claims.
- (3) Trial counsel failed to file a timely appeal when instructed to and court records show's petitioner informed his counsel to file a timely appeal
- (4) Trial counsel was told by petitioner to take plea agreement and failed to take it, saying "We'll win this case?" And counsel guaranteed he'd win to "sit down and shut up." 6th Amend.
- (5) Court went beyond recommended sentence by prosecutor and the court gave appellant a very harsh sentence given the victim was almost 18 years old, which is cruel and unusual punishment under the 8th Amendment.

(Appellant's brief, p. 2 (verbatim).)

The state rephrases the issue as:

Has Haas failed to show the district court erred in summarily dismissing Haas' third petition for post-conviction relief?

## ARGUMENT

### Haas Has Failed To Show The District Court Erred In Summarily Dismissing Haas' Third Petition For Post-Conviction Relief

#### A. Introduction

Haas' third petition for post-conviction relief claimed ineffective assistance by trial counsel, for (1) proceeding to trial rather than pursuing a plea agreement, and (2) failing to appeal after trial. (R., p. 5.) Haas also claimed ineffective assistance by counsel for his Rule 35 motion and first post-conviction petition for settling his first post-conviction petition case without achieving a further reduction in his sentence. (R., p. 5.) The district court dismissed Haas' petition, concluding that Haas failed to explain "why his claims of ineffective assistance of counsel were inadequately raised in either of his earlier petitions." (R., p. 100.) Haas does not address the district court's basis for its dismissal. Instead, Haas argues the substance of his third petition's underlying claims and adds an additional claim. (Appellant's brief, pp. 2, 7-12; see R., p. 5.)

Haas has failed to challenge the basis for the district court's dismissal, to show that consideration of his new claim is warranted, or to justify his 15-month delay in filing his third petition. Accordingly, this Court should affirm the district court's order summarily dismissing the petition.

#### 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)).

“Where the alleged facts, even if true, would not entitle the applicant to relief, the trial court may dismiss the application without holding an evidentiary hearing.”

Charboneau v. State, 144 Idaho 900, 903, 174 P.3d 870, 873 (2008) (citations omitted).

C. Haas Failed To Demonstrate Sufficient Reason Why He Did Not Assert Or Inadequately Raised His Third Petition's Claims In Prior Petitions

The district court dismissed Haas' third petition as an improper successive petition because Haas failed to provide sufficient reason for failing to assert his claims previously. (R., pp. 97-101.) All grounds for relief must be raised in a petitioner's "original, supplemental or amended application." I.C. § 19-4908. "Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived . . . may not be the basis for a subsequent application" unless the district court finds sufficient reason why the claim "was not asserted or was inadequately raised in the original, supplemental, or amended application." I.C. § 19-4908. Haas was on notice of this ground for dismissal in the state's reply. (R., p. 78.) However, Haas did not address I.C. § 19-4908, either in his sur-reply to the district court, or in his brief on this appeal. (R., pp. 92-94; see generally Appellant's brief.)

The record does not support that Haas had a sufficient reason for not asserting – or inadequately raising – his third post-conviction petition's claims in his prior petitions. The record shows Haas raised, or attempted to raise, his claim that trial counsel was ineffective for failing to appeal, in his first and second petitions for post-conviction relief. (R., pp. 113-16.) In its order dismissing Haas'

second petition, the district court found that Haas had settled the claim (raised in his initial petition) “in exchange for certain conditions associated with [his] I.C.R. 35 motion,” which the court agreed to dismiss. (R., p. 116.) Haas did not challenge the district court’s determination that counsel’s failure to appeal his underlying criminal matter “was settled.” (R., pp. 108-09, 116.) Upon re-asserting the issue in his third petition, Haas offered no explanation why it was inadequately raised before. (See R., pp. 74-76, 92-94.)

It does not appear from the record that Haas’ prior post-conviction petitions included claims of ineffective assistance by trial counsel for not pursuing a plea agreement, or ineffective assistance by post-conviction counsel for settling his initial post-conviction petition. (See R., pp. 107-10.) Haas asserts no reason why he failed to raise those claims – adequately or not – in his prior petitions. (See Appellant’s brief.) Despite that the district court based its dismissal of Haas’ successive petition on I.C. § 19-4908, Haas did not address the provision at all. Rather, Haas argued that dismissal would be improper under Martinez v. Ryan, 132 S.Ct. 1309 (2012). (R., pp. 74-76, 92-94.)

On appeal, Haas again fails to address I.C. § 19-4908. Instead, he again cites Martinez. (See Appellant’s brief, pp. 3-7.) Haas’ reliance on Martinez is misplaced. The Court in Martinez held that a federal habeas 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. Haas’ matter is not now before a federal habeas court, thus Martinez does not apply. Also, and significantly, Haas did not

allege specific facts or arguments that he received ineffective assistance by counsel for his second petition. (R., pp. 75-76, 92-94.)

In Hernandez v. State, 133 Idaho 794, 992 P.2d 789 (Ct. App. 1999), the Court held that under I.C. § 19-4908, a claim of ineffective assistance by post-conviction counsel, “if true, provides sufficient reason for permitting newly asserted allegations” as well as claims inadequately raised in the prior post-conviction petition. Id. at 798, 992 P.2d at 793 (citing Palmer v. Dermitt, 102 Idaho 591, 635 P.2d 955 (1981)). Hernandez identified specific facts that his post-conviction counsel knew and should have raised, but did not, and which he claimed resulted in the summary dismissal of his prior petition. Hernandez, 133 Idaho at 798-99, 992 P.2d at 793-94. In other words, Hernandez “alleged facts which, if proven, would constitute sufficient reason under I.C. § 19-4908 for the allowance of a successive application.” Id. at 799, 992 P.2d at 794. Haas did not. (R., pp. 74-76, 92-94.)

Haas argued he received ineffective assistance by trial counsel for proceeding to trial and not pursuing a plea agreement, then not pursuing an appeal. (R, pp. 75, 93.) Haas also argued he received ineffective assistance by counsel for his Rule 35 motion by failing to get the indeterminate part of his sentence reduced, thus foregoing his first petition. (R., pp. 75, 93.). However, Haas did not argue or allege facts to support a claim that he received ineffective assistance by counsel for his second post-conviction petition. Accordingly, Haas failed to meet his burden of demonstrating a sufficient reason to avoid dismissal under I.C. § 19-4908.

D. Haas Failed To Preserve A Claim That His Sentence Was Excessive

With respect to Haas' contention on appeal that the district court imposed an excessive sentence, this claim was never raised to the district court, and cannot be raised for the first time on appeal. (Appellant's brief, pp. 2, 11.) Dunlap v. State, 141 Idaho 50, 58, 106 P.3d 376, 384 (2005). Moreover, such a claim is not the proper subject of a post-conviction petition, but is a claim that must be raised on direct appeal. I.C. § 19-4901(b). Although the state recognizes that Haas has asserted ineffective assistance of counsel for failing to file an appeal, only that claim may be properly adjudicated in post-conviction, not the substantive claim Haas would have raised on appeal if an appeal had been filed.

E. Even If Haas Could Overcome The Successive Petition Bar In I.C. § 19-4908, His Second Successive Petition Is Untimely

Even if Haas had asserted a sufficient reason to overcome the bar to successive petitions under I.C. § 19-4908, his petition should nevertheless be deemed untimely under the circumstances.<sup>2</sup> The Idaho Supreme Court discussed a "reasonable time standard" for a successive petition under I.C. § 19-4908, in Charboneau, 144 Idaho 900, 174 P.3d 870. In that case, the Court

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<sup>2</sup> Although the district court ultimately dismissed Haas' third post-conviction petition for failure to allege sufficient grounds for relief, it had initially provided notice of intent to dismiss the petition as untimely. (R., pp. 64-68.) Thus, Haas had notice and an opportunity to respond and establish why his petition should be deemed timely; Haas' only response was that there is no time limit for filing successive petitions (R., pp. 74-76), an argument that ignores I.C. § 19-4908, and is therefore contrary to law.

held, “there should be a reasonable time within which [claims based on newly discovered evidence] are asserted in a successive post-conviction petition, once those claims are known.” Id. at 905, 174 P.3d at 875. “In determining what a reasonable time is for filing a successive petition, we will simply consider it on a case-by-case basis.” Id. The Charboneau Court found that the delay of 13 months after Charboneau’s awareness of new evidence, and before filing his successive petition, was “simply too long a period of time to be reasonable.” Id.

The Court of Appeals addressed the reasonableness of a year-long delay in filing a successive petition, in Schwartz v. State, 145 Idaho 186, 177 P.3d 400 (Ct. App. 2008). In that case, the Court agreed with the holding in Charboneau that, determining the reasonable time for filing a successive petition is considered “on a case-by-case basis.” Id. at 190, 177 P.3d at 404. In Schwartz, the Court found that the almost-12 months that Schwartz waited after being denied an extension to file a post-conviction petition, until she filed her petition alleging ineffective assistance, was too long. Id. at 191, 177 P.3d at 403.

Haas’ second petition was dismissed on April 18, 2011, following evidentiary proceedings regarding the district court’s jurisdiction to consider the petition. (R., pp. 107-19.) If Haas had any issues that were not raised, or inadequately raised, by counsel in his second petition, he was on notice of such deficiencies as of that date. Haas does not contend otherwise. Nonetheless, Haas did not file his third petition for post-conviction relief until 15 months later, on July 18, 2012. (R., p. 4.)

In light of Charboneau and Schwartz, Haas' delay of 15 months before filing his third petition is unreasonable. Haas has provided no reason why he did not file his third petition, or adequately assert the third petition's claims earlier. Accordingly, Haas has failed to show his petition was timely. This Court must therefore affirm the district court's order summarily dismissing Haas' petition.

CONCLUSION

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

DATED this 31st day of October, 2013.



\_\_\_\_\_  
DAPHNE J. HUANG  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of October, 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:

James T. Haas #37962  
ICC QLIB  
PO Box 70010  
Boise, Idaho 83707



\_\_\_\_\_  
DAPHNE J. HUANG  
Deputy Attorney General

DJH/pm