

6-17-2014

## Salinas v. State Respondent's Brief Dckt. 41049

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

CYNTHIA SALINAS,  
Petitioner-Appellant,  
vs.  
STATE OF IDAHO,  
Respondent.

No. 41049  
Gem Co. Case No.  
CV-2011-606

BRIEF OF RESPONDENT

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

HONORABLE GEORGE A. SOUTHWORTH  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

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Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

ATTORNEYS FOR  
RESPONDENT

PRO SE  
PETITIONER-APPELLANT

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## STATEMENT OF THE CASE

### Nature of the Case

Cynthia Salinas appeals, *pro se*<sup>1</sup>, from the summary dismissal of her petition for post-conviction relief.

### Statement of Facts and Course of the Proceedings

The relevant facts were outlined by the Idaho Court of Appeals in its unpublished decision on Salinas' direct appeal, as follows:

Cynthia Dawn Salinas pled guilty to felony driving under the influence. I.C. § 18-8004(C). The district court imposed a unified ten-year sentence with a five-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Salinas on probation. Subsequently, Salinas admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Salinas appeal[ed], contending that the district court abused its discretion in revoking probation and that the sentence is excessive.

State v. Salinas, Docket No. 38935, 2011 Unpublished Opinion No. 450, at \*1 (Idaho App., April 23, 2012). The Court of Appeals affirmed the district court's order revoking Salinas' probation and executing her sentence. Id. at \*2.

Salinas filed a timely *pro se* petition for post-conviction relief alleging that trial counsel was ineffective. (R., pp.11-14.) The state filed an answer and motion for summary dismissal, asserting the petition failed to state any grounds upon which relief could be granted. (R., pp.31-40.) Salinas' counsel filed an

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<sup>1</sup> Although counsel was originally appointed to represent Salinas in this appeal, the Court granted the SAPD's motion to withdraw. (12/11/13 Order Granting Motion for Leave to Withdraw and to Suspend Briefing Schedule.) The SAPD requested to withdraw as counsel after three separate attorneys conducted "a thorough review" of the appellate record in this case and concluded there were no "viable issue[s] for appeal." (11/7/13 Affidavit in Support of Motion for Leave to Withdraw and Motion to Suspend the Briefing Schedule, p.2.)

objection to the state's motion for summary dismissal and a memorandum in support thereof. (R., pp.76-89.) Following a hearing on the motion for summary dismissal, the district court entered a written order dismissing Salinas' petition, concluding there was "no material issue of fact." (R., pp.115-119.)

Salinas timely appealed. (R., pp.120-125.)

ISSUE

Salinas' Appellant's brief does not contain a statement of the issue(s) on appeal. The state phrases the issue as:

Has Salinas failed to carry her appellate burden of showing error in the summary dismissal of her post-conviction petition?

## ARGUMENT

### Salinas Has Failed To Carry Her Appellate Burden Of Showing Error In The Summary Dismissal Of Her Post-Conviction Petition

#### A. Introduction

The district court summarily dismissed Salinas' post-conviction petition, concluding that Salinas' petition contained no material issues of fact. (R., p.118.) On appeal, Salinas appears to challenge the summary dismissal of her petition, but she has failed to identify any specific error by the district court and has otherwise failed to present any cogent argument or legal authority to support her appellate claims.

#### B. Salinas Has Waived Appellate Consideration Of Her Challenge To The District Court's Order Of Summary Dismissal

It is well settled that a party waives an issue on appeal if either authority or argument is lacking. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). It is also well settled that the appellate court will not review actions of the district court for which no error has been assigned and will not otherwise search the record for errors. State v. Hoisington, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983).

Salinas contends on appeal that "due to [the] error" of her attorney, "the Appeal and Post-Conviction is [sic] now moot" even though Salinas "believe[d] [she] had a genuine issue/concern to have an evidentiary hearing." (Appellant's brief, p.3.) Salinas does not argue, however, that the district court erred in determining there were no issues of material fact in dismissing Salinas' petition.

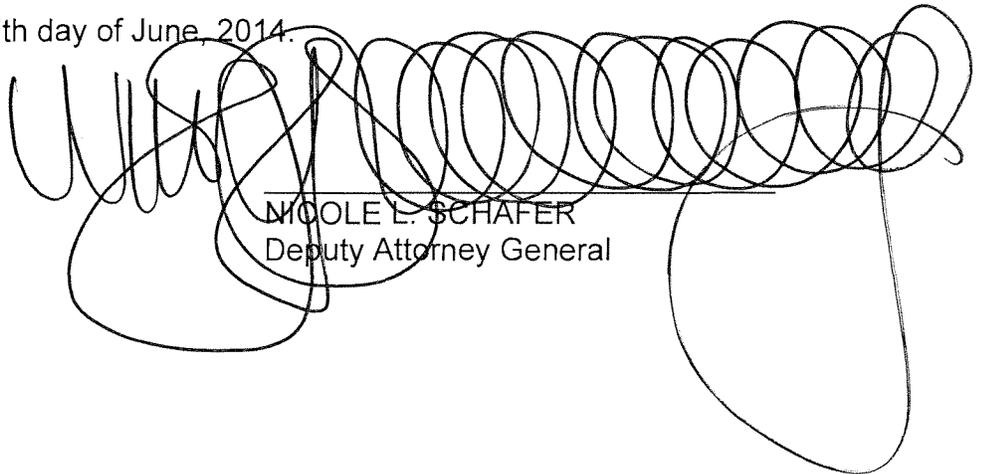
Nor has Salinas supported her appellate claims with any legal authority. Salinas has therefore not offered any argument, cogent or otherwise, to challenge the district court's rulings. (See generally Appellant's brief.)

Because Salinas has failed on appeal to identify any viable claim of error in the district court's actions and has otherwise failed to cite any relevant legal authority or make any cogent argument to support any claim of error, she has waived appellate review of any such claim and has thereby failed to show any error in the summary dismissal of her post-conviction petition.

#### CONCLUSION

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

DATED this 17th day of June, 2014.

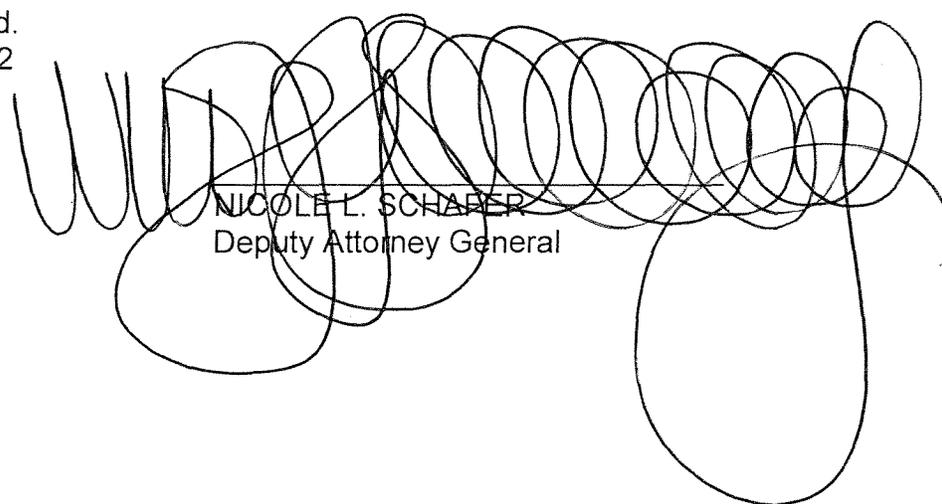


NICOLE L. SCHÄFER  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of June, 2014, 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:

CYNTHIA DAWN SALINAS,  
IDOC #63422  
EBCWC  
2366 Old Penn. Rd.  
Boise, Idaho 83712

A large, complex handwritten signature in black ink, consisting of many overlapping loops and swirls, covering the name and title of the signatory.

NICOLE L. SCHABER  
Deputy Attorney General

NLS/pm