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Sarabia v. State Respondent's Brief Dckt. 41066

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

HERIBERTO FERNANDEZ SARABIA,)	
)	No. 41066
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-303
)	
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

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FEB 18 2014

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

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STATEMENT OF THE CASE

Nature Of The Case

Heriberto Fernandez Sarabia appeals from the district court's order denying his petition for post-conviction relief.

Statement Of Facts And Course Of Proceedings

In 2009, 14-year-old A.G. disclosed to authorities that her step-father, Sarabia, engaged in weekly sexual contact with her since she was in the third grade. (#37267 PSI, pp.1-2.¹) This sexual interaction included oral sex and digital penetration of A.G.'s vagina. (#37267 PSI, p.2.) A.G. also reported that Sarabia and her mother were involved in drug trafficking, and that there were guns in the home. (#37267 PSI, pp.2-3.) Sarabia had threatened to use the weapons, A.G. reported, if he was contacted by law enforcement. (Id.) He also often brandished and discharged firearms during domestic disputes. (Id.)

Upon responding to A.G.'s home, officers noted the family residence was filthy, with dog feces on the floor and rotting food on the counters. (#37267 PSI, p.2). Officers observed guns, ammunition, and what appeared to be bullet holes in the floor and walls throughout the house. (Id.)

A grand jury indicted Sarabia on one count of felony injury to child and three counts of lewd conduct with a minor under 16 years of age. (#37267 R., pp.20-22.) The case proceeded to trial and a jury found Sarabia guilty on all counts. (#37267 R., pp.83-84.) The district court imposed concurrent unified life

¹ The Idaho Supreme Court granted Sarabia's motion to augment the record with the clerk's record, transcripts, and PSI from his direct appeal of the underlying convictions, Case No. 37267. (11/25/13 Order.)

sentences, with ten years fixed, for each of the three counts of lewd conduct, and a concurrent unified ten-year sentence with four years fixed for felony injury to child. (#37267 R., pp.109-111.) On appeal, Sarabia alleged that the sentences were excessive, but the Idaho Court of Appeals affirmed the district court. State v. Sarabia, 2010 Unpublished Opinion, Docket No. 37267 (Idaho App., October 18, 2010).

Sarabia then filed a petition for post-conviction relief and supporting affidavits. (R., pp.5-27, 53-62, 116-120.) The petition contained three broad claims: ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct. (R., pp.5-27.) Each of these claims contained numerous sub-claims. (Id.) The state moved for summary dismissal of each of Sarabia's claims and sub-claims, but the district court ordered an evidentiary hearing. (R., pp.74-83; 2/11/13 Tr., p.7, Ls.4-15.)

At the hearing, Sarabia presented only three witnesses, including himself, and no argument or other evidence. (5/2/13 Tr., p.6, L.7 – p.70, L.11; p.95, Ls.12-14.) Sergio Salazar, A.G.'s natural father, testified that he was aware that A.G. had accused him of engaging in inappropriate sexual conduct with her, and that these accusations were not true. (5/2/13 Tr., p.6, L.12 – p.11, L.9.) Elena Fernandez, Sarabia's niece, testified that A.G. "lied a lot," had told her that Salazar inappropriately touched her, and that A.G.'s trial testimony was inconsistent with A.G.'s statements to her in other respects. (5/2/13 Tr., p.16, L.17 – p.29, L.9.) Salazar and Fernandez both testified that they were never contacted by Sarabia's defense attorney about providing impeachment testimony

at trial. (5/2/13 Tr., p.7, Ls.14-25; p.17, L.24 – p.19, L.4.) Sarabia testified that he told his trial counsel that he wanted to plead guilty to the felony injury to child charge, but that his counsel never arranged a hearing for him to do so. (5/2/13 Tr., p.48, L.23 - p.56, L.8.)

In a memorandum decision, the district court construed Sarabia's petition as being "narrowed" to the three ineffective assistance of trial sub-claims that Sarabia appeared to assert through witness testimony at the evidentiary hearing: that his trial counsel was ineffective for failing to call Salazar and Fernandez as witnesses at trial, and for failing to permit Sarabia to plead guilty to the felony injury to child charge. (R., p.132.) The district court found that Sarabia failed to meet his burden of proving any of these three sub-claims, and denied Sarabia's petition for post-conviction relief. (R., pp.132-140.) The court also dismissed "all other claims" because Sarabia failed to support them with evidence. (R., p.137.) Sarabia timely appealed. (R., pp.141-145.)

ISSUES

Sarabia states the issue on appeal as:

Is reversal required because the district court failed to rule on all of Mr. Sarabia's claims in post-conviction?

(Appellant's Brief, p.3.)

The state rephrases the issue on appeal as:

Has Sarabia failed to show error in the district court's denial of his post-conviction petition?

ARGUMENT

Sarabia Has Failed To Show Error In The District Court's Denial Of His Post-Conviction Petition

A. Introduction

Sarabia contends that the district court erred by failing to specifically address all of the claims he raised in his petition for post conviction relief. (See generally Appellant's brief.) Sarabia, however, waived each of the claims the district court declined to specifically rule on by failing to present any evidence to support them during the evidentiary hearing, and by failing to challenge the district court's dismissal order below.

B. Sarabia Waived Each Of The Post-Conviction Claims That the District Court Did Not Specifically Address

Idaho Code § 19–4907(a) directs that a court in a post-conviction action “shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” The purpose of this requirement is to afford an appellate court an adequate basis upon which to review the district court's decision when a petition for post-conviction relief has been denied following an evidentiary hearing. Davis v. State, 116 Idaho 401, 405, 775 P.2d 1243, 1247 (Ct. App. 1989); Maxfield v. State, 108 Idaho 493, 497, 700 P.2d 115, 119 (Ct. App. 1985).

However, when an evidentiary hearing is held in a post-conviction proceeding, claims unsupported by any evidence at the hearing are subject to dismissal. Loveland v. State, 141 Idaho 933, 120 P.3d 751 (Ct. App. 2005). This is true even when the petitioner previously submitted affidavits asserting facts,

which if true, would have entitled the petitioner to post-conviction relief on those claims. Id. (holding that Loveland's affidavit did not automatically constitute evidence for purposes of an evidentiary hearing); see also State v. Jensen, 126 Idaho 25, 38, 878 P.2d 209, 212 (Ct. App. 1994) ("[F]indings are neither required nor possible where no evidence was presented upon which to base such a finding."). Further, the absence of express findings and conclusions may be disregarded by the appellate court where the record is clear and yields an obvious answer to the relevant question. Maxfield, 108 Idaho at 497, 700 P.2d at 119.

In this case, Sarabia's petition for post-conviction relief contained three broad claims, and approximately twenty-one sub-claims. (R., pp.5-27; see also Appellant's brief, pp.3-7 (enumerating Sarabia's post-conviction sub-claims)). However, Sarabia presented evidence in support of only three sub-claims during the evidentiary hearing. (See generally 5/2/13 Tr.) At the hearing, Sergio Salazar and Elena Fernandez both presented potential impeachment testimony regarding A.G.'s credibility. (2/11/13 Tr., p.6, L.12 – p.11, L.9; p.16, L.17 – p. 29, L.9.) Sarabia testified that his trial counsel prevented him from pleading guilty to the felony injury to child charge. (2/11/13 Tr., p.48, L.23 - p.56, L.8.) At the conclusion of the hearing, Sarabia declined to present any argument as to any of his claims, and thus failed to clarify the scope of his petition and claims contained within. (5/2/13 Tr., p.95, Ls.12-14.)

Also at the conclusion of the hearing, the prosecutor stated, "it seems to me that the allegations are now reduced to the issue[s] of whether counsel was

deficient in not calling Mr. Salazar to the stand and also not calling Elena Fernandez to the stand.” (5/2/13 Tr., p.95, Ls.18-25.) Sarabia did not object to this characterization or attempt to clarify the scope of his petition. Then, in its memorandum decision denying Sarabia’s petition, the district court recognized that at the evidentiary hearing, “the focus of the post-conviction proceeding was narrowed to whether additional impeachment evidence should have been offered” and whether Sarabia’s counsel refused to let him plead guilty to the felony injury to child charge. (R., p.132.) The district court analyzed and denied these three sub-claims, concluding that Sarabia failed to meet his burden to prove ineffective assistance of trial counsel.² (R., pp.132-140.)

Citing Loveland, the court also expressly dismissed “all other claims” on the ground that Sarabia failed to support them with evidence at the evidentiary hearing. (R., p.137.) The district court’s rationale in dismissing the balance of Sarabia’s claims was correct. Even though Sarabia had addressed some of his other sub-claims, albeit in a conclusory fashion, in an affidavit submitted in support of his petition for post-conviction relief, he did not submit this affidavit as evidence during the evidentiary hearing. (See generally 5/2/13 Tr.) Because Sarabia failed to present evidence in support of these other post-conviction claims during the evidentiary hearing, these claims were waived. See Loveland, 141 Idaho 933, 120 P.3d 751.

Further, Sarabia also failed to make use of other avenues by which he could have challenged the district court’s dismissal order below. See I.R.C.P.

² On appeal, Sarabia has not challenged the district court’s denial of these three sub-claims. (See generally Appellant’s brief.)

11(a)(2)(B) (governing motions for reconsideration); I.R.C.P. 52(b) (governing motions to amend judgments or to make additional findings); I.R.C.P. 59(e) (governing motions for relief from judgment). The Idaho Court of Appeals has encouraged the utilization of these rules where petitioners assert procedural errors in post-conviction proceedings, to give the court an opportunity to take prompt corrective actions, or to provide rationale for its decisions that may be evaluated on appeal. See Isaak v. State, 132 Idaho 369, 370 n. 2, 972 P.2d 1097, 1098 n. 2 (Ct. App. 1999).

In the alternative, should this Court find that the district court committed reversible error by failing to specifically address each of Sarabia's claims and sub-claims, it should vacate the dismissal order and remand the case with instructions for the court to address each claim based upon the evidence already submitted in the post-conviction proceedings. Sarabia is not entitled to a new evidentiary hearing or a second opportunity to present evidence because he asserts only post-hearing error.

By failing to present evidence at the evidentiary hearing, and by failing to pursue available remedies below, Sarabia waived each of his post-conviction claims that the district court did not specifically address. This Court should therefore affirm the district court's denial of Sarabia's petition for post-conviction relief.

CONCLUSION

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

DATED this 18th day of February, 2014.


MARK W. OLSON
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 BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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MWO/pm