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Coleman v. State Respondent's Brief Dckt. 41080

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

CHARLES SHELDTON COLEMAN,)	
)	No. 41080
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2013-3564
)	
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

HONORABLE MELISSA MOODY
District Judge

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FILED - COPY

JUN 17 2014

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

PRO SE
PETITIONER-APPELLANT

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STATEMENT OF THE CASE

Nature Of The Case

Charles S. Coleman appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

Coleman pled guilty to and was convicted of robbery, unlawful exercise of the functions of a police officer, and battery on a sheriff, and the district court imposed sentences totaling 36 years with seven years determinate. (R., pp. 3, 35, 38.) He filed motions to reduce his sentences, which were denied, and the denial of his post-judgment motions was affirmed on appeal. (R., p. 38.) He initiated the instant case by filing a post-conviction petition¹ and later, through counsel, an amended petition. (R., pp. 3-9, 34-36.)

Coleman asserted claims of ineffective assistance of counsel for not “address[ing] mitigating factors at sentencing,” failing to address “mental health issues,” failing to request a mental health evaluation, and a claim that the court had failed to address his request for counsel to pursue his Rule 35 motions. (R., pp. 4-5, 8, 36 (capitalization altered).) The district court provided notice of intent to dismiss these claims for failure to plead both elements of ineffective assistance of counsel and because the claims were disproved by the record or legally invalid. (R., pp. 38-44.)

¹ Because the appeals in the criminal cases were only from the denial of post-judgment motions, it is likely that the petition was not timely from the entry of the judgments. This issue was not raised to the district court, however.

Responding to the notice of intent to dismiss, Coleman's counsel abandoned the claims asserted in the original petition (stating they had been "inadvertently incorporated") and elected to pursue only the claim that counsel had been ineffective for failing to request a mental health evaluation for sentencing pursuant to I.C. § 19-2522. (R., pp. 46-47.) Specifically, Coleman asserted counsel was ineffective for failing to request a third evaluation where the two evaluations prepared for sentencing presented "inconsistent diagnoses." (Id.) The court dismissed the petitions for the reasons set forth in the notice of intent to dismiss. (R., p. 49.) Coleman filed a timely notice of appeal. (R., pp. 51-53.)

ISSUES

Coleman states the issues on appeal as:

- I. Did the district court abuse its discretion when it denied the petitioner's right to a [sic] due process, thus abrogating [sic] the state and federal due process rights of the Appellant under Article 1, Section 13 and the 14th amendment of the U.S. Constitution?

- II. Has the district court erred in its conclusion that the Petitioner did not suffer a level of ineffective assistance of counsel which violates the Appellant's rights under the due process portions of both the Idaho and U.S. constitutions?

(Appellant's brief, p. 3 (capitalization altered).)

The state rephrases the issues as:

1. Must this Court refuse to consider Coleman's due process argument because he pled no such claim in his petition or amended petition?

2. Has Coleman failed to show he presented a *prima facie* claim of ineffective assistance of counsel?

ARGUMENT

I.

Coleman's Claim Of A Due Process Violation In The Criminal Case Is Not Before This Court

On appeal Coleman claims that the district court *in the criminal case* denied him due process by failing to afford him the right of allocution at sentencing. (Appellant's brief, pp. 5-11.²) Coleman's attempt to assert a cause of action never included in his petition or amended petition is meritless. Schultz v. State, 151 Idaho 383, 387, 256 P.3d 791, 795 (Ct. App. 2011) (appellate court "will not address" claims not properly pled below).

II.

Coleman Has Failed To Show He Presented A *Prima Facie* Claim Of Ineffective Assistance Of Counsel

A. Introduction

Coleman claims it is an "undisputed" fact that "counsel failed to object or raise issue of inconsistent mental health and GAIN-I evaluations and never recommended a third and more thorough evaluation" and that this failure prejudiced him. (Appellant's brief, p. 12 (capitalization altered).) Even conceding, for purposes of summary disposition, that the two evaluations were in "conflict," such does not present even a *prima facie* claim of ineffective assistance of counsel.

² The state notes that this claim is false. Coleman's allocution starts on page 20 of the partial transcript he attached to his brief. (Appellant's brief, "Exhibit C.")

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

C. The Existence Of Conflicting Evidence Does Not Show Deficient Performance By Trial Counsel Or Prejudice

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief in response to a party's motion or on the court's own initiative. "To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 "if the applicant's evidence raises no genuine issue of material fact" as to each element of petitioner's claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297.

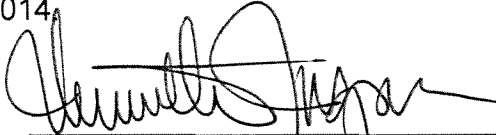
In order to survive summary dismissal of an ineffective assistance of counsel claim, a post-conviction petitioner must specifically demonstrate that “(1) a material issue of fact exists as to whether counsel’s performance was deficient, and (2) a material issue of fact exists as to whether the deficiency prejudiced the applicant’s case.” Baldwin v. State, 145 Idaho 148, 153-54, 177 P.3d 362, 367-68 (2008) (internal citations omitted). “To establish deficient assistance, the burden is on the petitioner to show that his attorney’s conduct fell below an objective standard of reasonableness. This objective standard embraces a strong presumption that trial counsel was competent and diligent.” Id. “[S]trategic or tactical decisions will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation.” Id. “To establish prejudice, the claimant must show a reasonable probability that but for his attorney’s deficient performance the outcome of the proceeding would have been different.” Id.

Coleman’s argument is, in its entirety, a claim that because there is conflicting evidence in the record regarding his mental health arising from two evaluations, counsel was ineffective for failing to get a third evaluation. (R., pp. 46-47; Appellant’s brief, p. 12.) Conflicting evidence is the norm in both trials and sentencing. The existence of conflicting evidence alone does not suggest, much less demonstrate, deficient performance or prejudice.

CONCLUSION

The state respectfully requests this Court to affirm the district court's summary dismissal of the petitions for post-conviction relief.

DATED this 17th day of June, 2014,

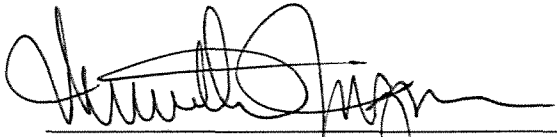


KENNETH K. JORGENSEN
Deputy Attorney General

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:

CHARLES SHELDON COLEMAN
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KKJ/km