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## Macik v. State Respondent's Brief Dckt. 41154

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

RONALD L. MACIK,  
Petitioner-Appellant,  
vs.  
STATE OF IDAHO,  
Respondent.

No. 41154  
Ada Co. Case No.  
CV-2013-2644

**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 CHERI C. COPSEY  
District Judge

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Entered on ATS by \_\_\_\_\_

ATTORNEYS FOR  
RESPONDENT

PRO SE  
PETITIONER-APPELLANT

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## STATEMENT OF THE CASE

### Nature Of The Case

Ronald Lee Macik appeals from the summary dismissal of his successive petition for post conviction relief.

### Statement Of The Facts And Course Of The Proceedings

Macik pled guilty to first-degree murder in 1972 and was sentenced to indeterminate life. (R., p. 251.) More than 38 years later he moved to withdraw his guilty plea, but the motion was dismissed for lack of jurisdiction. (Id.) He then filed for post-conviction relief, which was denied as untimely. (R., pp. 251-52.) Macik moved to re-open the criminal case asserting claims of newly discovered evidence, which claims, after appointment of counsel, were re-filed as a successive petition for post-conviction relief, initiating the current case. (R., p. 252; see also R. pp. 3-11.)

The state moved to dismiss the petition in a motion called a “supplemental” motion to dismiss because it incorporated the objection to the originally filed motion to re-open the criminal case. (R., pp. 15-18; see also pp. 258-59.) The motion demonstrated that the “newly discovered evidence” was in fact the preliminary hearing transcript from the underlying criminal case and that additional claims were based on facts known during the criminal proceedings. (R., pp. 15-18; see also pp. 20-250.) The district court dismissed the petition as both untimely and successive. (R., pp. 251-56.) Macik filed a notice of appeal timely from entry of judgment. (R., pp. 263-67.)

ISSUE

Macik states the issues on appeal as:

THE DISTRICT COURT ERRED IN DISMISSING MR. MACIK'S SUCCESSIVE PETITION WITHOUT APPLYING AN ACTUAL INNOCENCE STANDARD OF REVIEW.

(Appellant's brief, p. 19.)

THE DISTRICT COURT ERRED IN DETERMINING THAT MR. MACIK'S PLEA WAS KNOWING WILLING, AND WITHOUT DURESS.

(Appellant's brief, p. 25.)

The state rephrases the issue as:

Has Macik failed to demonstrate error in the summary dismissal of his untimely, successive petition for post-conviction relief?

## ARGUMENT

### Macik Has Failed To Demonstrate Error In The Summary Dismissal Of His Untimely, Successive Petition For Post-Conviction Relief

#### A. Introduction

The district court applied Idaho law and dismissed the untimely successive petition in this case. (R., pp. 251-56.) On appeal Macik argues for application of federal habeas corpus law, which allows for an “actual innocence” claim under the “miscarriage of justice exception” to the procedural bars of the Antiterrorism and Effective Death Penalty Act (AEDPA). (Appellant’s brief.) This argument fails because application of Idaho law shows that the appeal was both untimely and successive.

#### 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 Petition Was Properly Dismissed As Untimely And Successive

Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition “any time within one (1) year from the expiration

of the time for appeal or from the determination of an appeal or from the determination of proceedings following an appeal, whichever is later.” Absent a showing by the petitioner that the limitation period should be tolled, the failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Rhoades v. State, 148 Idaho 247, 220 P.3d 1066 (2009); Evensiosky v. State, 136 Idaho 189, 30 P.3d 967 (2001); Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009).

Idaho law also provides that any claim “adjudicated” or “not so raised” in an initial post-conviction proceeding “may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised.” I.C. § 19-4908. A successive petition must be dismissed in the absence of a showing of sufficient reason why the claims were not brought in the original proceeding. Griffin v. State, 142 Idaho 438, 441, 128 P.3d 975, 978 (Ct. App. 2006).

Macik brought the current claims decades after his conviction became final and after his initial petition was deemed untimely. The district court concluded factually that Macik was aware at the time of his guilty plea of the evidence upon which he bases his claims, and had a transcript of the testimony underlying his innocence claim no later than three years prior to filing his petition. (R., pp. 253-55.) These facts are clear in the record and not contested on appeal. Application of the correct legal standards to these facts shows that the petition is both time-barred and an inappropriate successive petition.



Macik does not contend that application of Idaho law leads to any result other than proper dismissal. Instead, he requests this Court to apply the “miscarriage of justice exception” for “actual innocence” incorporated into the federal AEDPA. (Respondent’s brief.) In Idaho, courts interpret statutes according to their plain language. Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). There is no “actual innocence” exception to the procedural requirements of the UPCPA. I.C. §§ 19-4902(a), 19-4908. Macik presumably knew whether he was innocent at the time he pled guilty. He was also present at the preliminary hearing. Under Idaho law Macik may not wait thirty years to act on known claims. See, e.g., Rhoades v. State, 148 Idaho 247, 250-52, 220 P.3d 1066, 1069-71 (2009) (statute of limitations is not tolled when petitioner knows or should know of facts underlying claim). That Congress incorporated an already existing miscarriage of justice exception into the AEDA, McQuiggin v. Perkins, 133 S.Ct. 1924, 1931-32 (2013), does not place such an exception in the Idaho statutes. Macik has shown nothing in the plain language of the UPCPA that would support any “miscarriage of justice exception” to its procedural requirements.<sup>1</sup>

The district court properly applied Idaho law to the motion to dismiss the petition. No error in the application of Idaho law has been claimed or shown.

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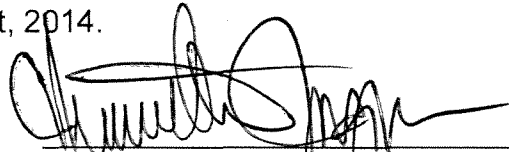
<sup>1</sup> Even if such an exception existed, the transcript of Macik’s preliminary hearing does not prove by a preponderance of evidence that “it is more likely than not that no reasonable juror would have convicted the petitioner.” Perkins, 133 S.Ct. at 1933 (internal quotes and brackets omitted).

Macik advocates application of federal law under the AEDPA, but that law does not apply to this case. He has therefore failed to show error.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order dismissing the untimely successive petition for post-conviction relief.

DATED this 12th day of August, 2014.



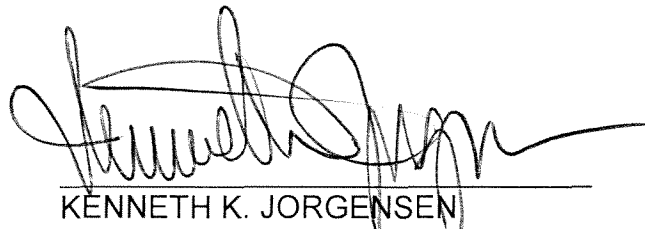
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KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of August, 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:

RONALD L. MACIK  
IDOC #12680  
PO Box 70010  
Boise, ID 83707



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KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm