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Smith v. State Respondent's Brief Dckt. 41229

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

CHARLES EDWARD SMITH,)	
)	No. 41229
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-11044
)	
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 DEBORAH A. BAIL
District Judge

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State of Idaho

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RESPONDENT

FILED - COPY

MAY - 1 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 Edward Smith appeals from the judgment dismissing his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

In 2007, the state charged Smith with felony driving under the influence, “with the enhancement to a felony based on a prior felony DUI conviction.” State v. Smith, Docket No. 34855, 2010 Unpublished Opinion No. 435 at p.2 (Idaho App. April 21, 2010). The state also alleged a persistent violator enhancement “based on the two prior DUI convictions and one prior felony grand theft conviction.” Id. A jury found Smith guilty of driving under the influence, “and after waiving his right to a jury trial on the felony and persistent violator enhancements, the court found him guilty of both.” Id. The court imposed a unified 25-year sentence with six years fixed but reduced the fixed portion of Smith’s sentence to five years in response to Smith’s I.C.R. 35 motion. Id.

On direct appeal, appellate counsel claimed Smith’s right to a jury trial was violated as a result of the officers’ testimony that he was intoxicated. Smith at p.2. Smith was, however, permitted to file a pro se supplemental brief raising additional issues. Id. at pp.2-3. One of those issues was a claim that Smith’s sentence is illegal “because application of both the felony DUI enhancement and the persistent violator enhancement to his DUI conviction violates the constitutional protection against double jeopardy.” Id. at p.11. The Court of Appeals declined to address this issue because Smith failed to raise it before the district court. Id.

Following his direct appeal, Smith filed another Rule 35 motion, claiming “use of two (2) enhancement penalty statutes . . . violates the multiple punishment clause of Article I § 13 of the Idaho Constitution.” (See R., p.49.) The district court denied the motion. (R., p.49.) The Court of Appeals affirmed, rejecting Smith’s double jeopardy claim. State v. Smith, Docket No 38232, 2011 Unpublished Opinion No. 673 (Idaho App. Oct. 21, 2011) (“Smith II”). Smith filed a petition for review, which the Idaho Supreme Court denied. (Exhibit.¹) The Remittitur issued on December 29, 2011. (Exhibit.)

On June 19, 2012, Smith filed a *pro se* petition for post-conviction relief claiming his “sentence is in violation of the Constitution of the United States by virtue of multiple punishment.” (R., pp.4-7.) In his supporting affidavit, Smith asserted “the Idaho Court of Appeals has issued an opinion in the case contrary to past decision [sic] by that Court and contrary to the Idaho Supreme Court.” (R., p.9.) Smith filed a motion for appointment of counsel, which the court granted. (R., pp.2, 17-19.)

The state filed an Answer and a motion for summary dismissal. (R., pp.26-30, 38-43.) Smith filed a response to the state’s motion. (R., pp.45-47.) The district court summarily dismissed Smith’s petition because the “issue raised by [Smith] in this post-conviction proceeding was previously addressed and resolved on direct appeal by the Court of Appeals.” (R., pp.48-52.) Smith filed a timely notice of appeal. (R., pp.59-60.)

¹ Pursuant to Smith’s motion, the Court has previously taken judicial notice of the Order Denying Petition for Review in Docket No. 38232. (Order, dated March 12, 2014.) Contemporaneous with this brief, the state filed a motion asking the Court to also take judicial notice of the petition itself and the brief filed in support thereof.

Although the district court appointed the State Appellate Public Defender (“SAPD”) to represent Smith on appeal (R., p.70), the Idaho Supreme Court granted the SAPD’s request to withdraw (Order Allowing Counsel Leave to Withdraw and Appellant to Proceed Pro Se, dated January 22, 2014). The SAPD sought leave to withdraw at Smith’s request. (Motion for Leave to Withdraw, filed December 20, 2013).

ISSUES

Smith states the issue on appeal as:

Smith's Sentence Is Illegal And In Violation Of the Principles Of The Double Jeopardy Clause Of The 5th Amendment Of The United States Constitution And Article 1 § 13 Of The Idaho Constitution, Which Prohibits Multiple Prosecutions For The Same Offense.

(Appellant's Brief, p.11 (capitalization original).)

The state rephrases the issues on appeal as:

Has Smith failed to show the district court erred in summarily dismissing his post-conviction petition where the sole claim in the petition was one previously decided on appeal from the denial of Smith's I.C.R. 35 motion?

ARGUMENT

Smith Has Failed To Show Error In The Summary Dismissal Of His Double Jeopardy Claim, Which Was Already Litigated On Appeal From The Denial Of A Rule 35 Motion

A. Introduction

On appeal, rather than address the district court's basis for dismissing his post-conviction petition, Smith catalogues his complaints about the flaws he perceives in the Court of Appeals' opinion in Smith II. (See generally Appellant's Brief, pp.12-17.) Because Smith has not identified any error in the district court's decision and because his complaints about the Court's opinion in Smith II are not the proper subject of a post-conviction petition, he has failed to show any basis for reversal.

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 District Court Correctly Dismissed Smith's Petition

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.

The only claim Smith alleged in his petition is that his "sentence is in violation of the Constitution of the United States by virtue of multiple punishment." (R., pp.4-7.) This claim was properly dismissed because it was previously litigated in Smith I. "[W]hen legal issues are decided in a criminal action on direct appeal, the defendant is barred by the doctrine of res judicata from raising them again in a post-conviction relief proceeding." State v. Creech, 132 Idaho 1, 10 n.1, 966 P.2d 10 n.1 (1998) (citations omitted); also Brandt v. State, 118 Idaho 350, 352, 796 P.2d 1023, 1025 (1990) ("a petition for post-conviction relief does not require a trial court to consider again issues which were raised and decided on direct appeal"). The district court correctly concluded as much. (R., pp.51-52.) Because Smith does not challenge the actual grounds for dismissal of his petition, this Court should affirm. State v.

Goodwin, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998) (where a basis for a ruling by a district court is unchallenged on appeal, appellate court will affirm on the unchallenged basis).

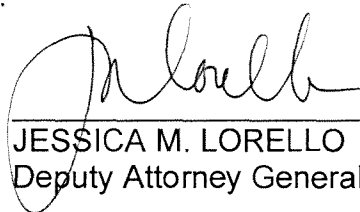
As for the arguments Smith does present, *i.e.*, the reasons he believes the Court of Appeals erred in Smith II, Smith already sought review of this issue by the Idaho Supreme Court, and his request for review was denied. (Petition for Review, Docket No. 38232; Brief in Support of Petition for Review, Docket No. 38232; Order Denying Petition for Review, Docket No. 38232 (Exhibit).) Post-conviction does not provide an avenue to revisit the Court's decision. See I.C. § 19-4901(b).

Smith has failed to assert, much less establish, any error in the district court's decision summarily dismissing his petition or articulate any other grounds for reversal.

CONCLUSION

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

DATED this 1st day of May, 2014.



JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of May 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 E. SMITH
IDOC # 20416
ICC
PO Box 70010
Boise, ID 83707

A handwritten signature in cursive script, appearing to read "J. Lorello", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

JESSICA M. LORELLO
Deputy Attorney General