

5-6-2014

Nelson v. State Appellant's Brief Dckt. 41525

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WESTON KENNETH NELSON,)	
)	NO. 41525
Petitioner-Appellant,)	
)	BINGHAM CNTY NO. CV 2013-1542
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM

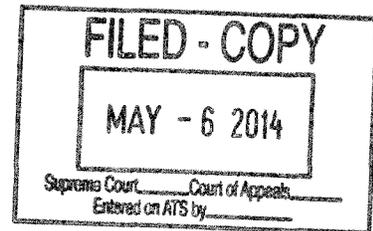
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STATEMENT OF THE CASE

Nature of the Case

Weston Nelson appeals from the district court's Judgment of Dismissal granting the State's motion for summary dismissal. Mr. Nelson asserts that the district court erred in summarily dismissing his claim that his guilty plea was induced by his trial counsel's false promise that he would be accepted into a problem solving court.

Statement of the Facts and Course of Proceedings

Mr. Nelson pled guilty to burglary and was sentenced to a unified term of 10 years, with 6 years fixed. (R., pp.14-15.) He filed a timely Petition for Post Conviction Relief along with an Affidavit of Facts in Support of Post-Conviction Petition. (R., pp.11-17.) Mr. Nelson generally claimed that his counsel was ineffective, that his plea was not knowing or voluntary because it was induced by promises that were not kept, and that his sentence was disproportionate to the crime he pled guilty to. (R., p.15.) In one of his claims, Mr. Nelson asserted that he received ineffective assistance of counsel as his counsel, "Told me I would qualify for a problem-solving court, which she was a member of the board of, knowing that I was a Utah resident with no local ties." (R., p.16.) In his affidavit, Mr. Nelson expanded on this claim asserting,

Ms. Campbell advised me to plead guilty as charged with the intent of entering a problem solving court. (Drug court or Wood pilot). Ms. Campbell was a member of the board that approves or denies applicants and she told me that I met the qualifications. On her advise (sic), I plead guilty and applied to the problem-solving courts and was immediately denied because I am resident of Utah and "have no local ties and support to do the programs." This is information Ms. Campbell had prior to giving me the faulty advice.

(R., p.11.) The district court granted Mr. Nelson's request for the appointment of counsel. (R., pp.18-21, 31.)

The State filed an Answer, a Motion for Summary Disposition, and a Brief in Support of Summary Disposition arguing, generally, that the district court should summarily dismiss Mr. Nelson's petition. (R., pp.33-36, 42-54.) Along with its other arguments, the State asserted that "[i]n order for a claim to be raised in a post-conviction proceeding, it must be raise on direct appeal or, a Petitioner must demonstrate why the claim was not raised on direct appeal." (R., p.50.) Based upon this analysis, the State asserted that the only issue that could be raised in this post-conviction petition was Mr. Nelson's excessive sentence claim, which had already been raised and denied on appeal. (R., p.50.)

The court held a hearing on the State's motion for summary dismissal, during which counsel for Mr. Nelson appeared to undermine all of Mr. Nelson's claims with the exception of one.¹ (Tr., p.3, L.14 – p.7, L.6.) Regarding Mr. Nelson's claim that his trial counsel falsely told him he would be eligible for a problem-solving court despite knowing that he was a resident of Utah, trial counsel stated the following:

In 1(B), he indicates "She advised me to plead guilty with the intent of entering a problem-solving court." He did apply for the problem-solving courts, and he was turned down from Drug Court. He was turned down from Wood Pilot Court. And he was also turned down for Mental Health Court. So I don't see that his ineffective assistance of counsel claim is supported in (B) either.

¹ Mr. Nelson had asserted that the State breached the terms of the plea agreement by recommending the maximum sentence arguing that the plea agreement required the State not to exceed the recommendation of the PSI writer, which was merely a recommendation of incarceration. (R., p.11.) Counsel for Mr. Nelson requested an evidentiary hearing on that issue. (Tr., p.5, L.4 – p.7, L.6.) Mr. Nelson does not assert the district court erred in summarily dismissing this claim.

(Tr., p.4, Ls.9-16.) The district court granted the State's motion for summary dismissal, without specifically addressing Mr. Nelson's claim that his trial counsel induced him to plead guilty under the false promise that he would be admitted to a problem-solving court knowing that he was a resident of Utah. However, the district court stated,

I will also comment that there had been an appeal to the Supreme Court of Idaho in this particular matter. And many issues, as you pointed out in your brief, [Mr. Prosecutor], were raised, but none of them were raised that were raised in the petition and could have been raised in this particular matter. And, therefore, on that basis, I'm going to deny the petition for post-conviction relief.

(Tr., p.9, Ls.16-24.) Mr. Nelson filed a timely Notice of Appeal. (R., pp.2-5, 57-60, 65-66.)

ISSUE

Did the district court err in granting the State's motion for summary dismissal of Mr. Nelson's claim that his trial counsel was ineffective, and his plea was not knowingly, intelligently, and voluntarily entered into, based upon counsel falsely advising Mr. Nelson that he was eligible for a problem-solving court, while knowing that he was not?

ARGUMENT

The District Court Erred In Granting The State's Motion For Summary Dismissal Of Mr. Nelson's Claim That His Trial Counsel Was Ineffective, And His Plea Was Not Knowingly, Intelligently, And Voluntarily Entered Into, Based Upon Counsel Falsely Advising Mr. Nelson That He Was Eligible For A Problem-Solving Court, While Knowing That He Was Not

A. Introduction

Mr. Nelson averred in his affidavit in support of his post-conviction petition that his trial counsel told him that she was on the board that determined whether individuals are eligible for a problem-solving court and that he would be eligible, knowing that Mr. Nelson was not eligible because he was a resident of Utah. The State did not bring forth any evidence to controvert this factual assertion. Therefore, there exists a genuine issue of material fact as to this issue and the district court erred in summarily dismissing this issue.

B. Standards Of Review

A post-conviction petition initiates a proceeding that is civil in nature and, like a plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). However, unlike a plaintiff in other civil cases, the original post-conviction petition must allege more than merely "a short and plain statement of the claim." *Id.* at 443-444. The application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.* In addition, the post-conviction petition must set forth with specificity the legal grounds upon which the application is based. *Ridgley v. State*, 148 Idaho 671, 675 (2010).

A claim of ineffective assistance of counsel may properly be brought through post-conviction proceedings. *Thomas v. State*, 145 Idaho 765, 769, 185 P.3d 921, 925 (Ct. App. 2008). To prevail on a claim of ineffective assistance of counsel, a petitioner must first show that trial counsel's performance was constitutionally deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Aragon v. State*, 114 Idaho 758, 760 (1988). Where a defendant shows that his counsel was deficient, prejudice is shown if there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, at 694; *Aragon* at 760. Where a petitioner claims that his guilty plea was induced by the erroneous advice of counsel, the petitioner must demonstrate that, but for counsel's erroneous advice, the petitioner would not have entered into the plea agreement. *Hill v. Lockhart*, 474 U.S. 52, 59-60 (1985).

A district court may summarily dismiss a post-conviction petition only where the petition and evidence supporting the petition fail to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. "A material fact has 'some logical connection with the consequential facts[,]'" *Black's Law Dictionary*, 991 (7th Ed.1999), and therefore is determined by its relationship to the legal theories presented by the parties." *Id.* On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the appellate court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896 (Ct. App. 1993).

The United States Supreme Court has defined the standard for whether there exists a genuine issue of material fact as whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved in favor of either party.” *Id.* at 250. If a genuine factual issue is presented, an evidentiary hearing must be conducted. *Yakovac*, 145 Idaho at 444. The underlying facts alleged by the petitioner “must be regarded as true” for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009).

C. There Was A Genuine Issue Of Material Fact As To Whether Mr. Nelson’s Trial Counsel Falsely Advised Him That He Would Be Accepted Into A Problem Solving Court

Mr. Nelson swore in his affidavit in support of his petition for post-conviction relief that his trial counsel told him that she was on the board that decides who is eligible for a problem-solving court, and that she told him that he was eligible despite knowing that he was a resident of Utah and, thus, was not eligible to participate in a problem-solving court. (R., p.11.) Mr. Nelson further swore that he pled guilty based upon this false advice, and he applied for problem-solving courts only to find that he was not eligible because of his residency, of which trial counsel was aware prior to his entering his plea. (R., p.11.) As such, he has provided evidence which, if proven by a preponderance of

the evidence, entitles him to post-conviction relief. See *Hill v. Lockhart*, 474 U.S. 52, 59-60 (1985).

The State presented no evidence to the contrary. Mr. Nelson's counsel's failure to recognize the validity of this claim does not relieve the district court of its duty to determine whether there was a genuine issue of material fact which, if found in Mr. Nelson's favor, would entitle him to relief. Therefore, this Court should find that the district court erroneously granted the State's motion for summary dismissal of this issue, and should remand the case to the district court with instructions that an evidentiary hearing be held.

D. Mr. Nelson's Failure To Assert That His Guilty Plea Was Induced By His Trial Counsel's False Promise On His Direct Appeal, Does Not Preclude Him From Raising This Issue In Post-Conviction

In its Brief in Support of Summary Dismissal, the State made the claim that "In order for a claim to be raised in a post-conviction proceeding, it must be raise on direct appeal or, a Petitioner must demonstrate why the claim was not raised on direct appeal." (R., p.50.) The district court appears to have agreed with this proposition and stated that it was denying Mr. Nelson's post-conviction petition on this basis. (Tr., p.9, Ls.16-24.) Both the State and the district court are wrong.

A claim of ineffective assistance of counsel can be raised either in a direct appeal or in a post-conviction, but not both. *Parrott v. State*, 117 Idaho 272 (1990). The fact that Mr. Nelson did not raise his ineffective assistance of counsel claims in his direct appeal does not preclude him from raising these claims in his petition for post-conviction relief. In fact, the opposite is true. Mr. Nelson's decision not to raise any ineffective assistance of counsel claims in his direct appeal was a prerequisite to him being able to

raise these claims in his post-conviction. Thus, the district court's denial of Mr. Nelson's claim on this basis is erroneous.

CONCLUSION

Mr. Nelson respectfully requests that this Court vacate the district court's summary dismissal of his claim that his plea was induced by a false promise made by his trial counsel, and remand this case for an evidentiary hearing.

DATED this 6th day of May, 2014.


JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

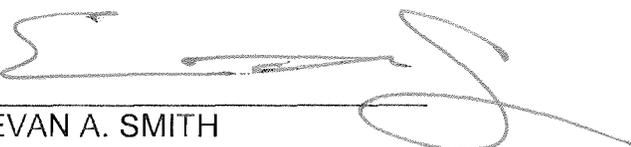
I HEREBY CERTIFY that on this 6th day of May, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DARREN B SIMPSON
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