

2-9-2015

## Griffith v. State Respondent's Brief Dckt. 41631

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

CHRISTOPHER DAVID GRIFFITH, )  
 )  
 Petitioner-Appellant, )  
 )  
 vs. )  
 )  
 STATE OF IDAHO, )  
 )  
 Respondent. )

No. 41631  
Bonneville Co. Case No.  
CV-2013-1494

**BRIEF OF RESPONDENT**

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

HONORABLE JON J. SHINDURLING,  
District Judge

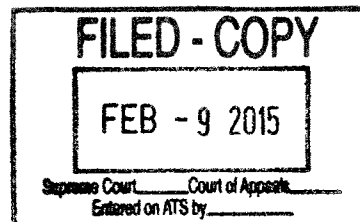
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## STATEMENT OF THE CASE

### Nature Of The Case

Christopher D. Griffith appeals from the summary dismissal of his successive petition for post-conviction relief.

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

While in Griffith's care two-year-old Tegan Rees suffered a fatal injury resulting from a blow that cut his pancreas nearly in half by compressing it against his spine. State v. Griffith, 144 Idaho 356, 358, 161 P.3d 675, 677 (Ct. App. 2007). The evidence also showed Tegan suffered multiple additional injuries, including bruises and hematomas. Id. A jury found Griffith guilty of first-degree murder, and the Idaho Court of Appeals affirmed his conviction in 2007. Id.

Griffith filed his first petition for post-conviction relief in 2008, and it was dismissed in 2009 and not appealed. (R., p. 88; see also R., p. 6 (claiming ineffective assistance of post-conviction counsel for failing to appeal).)

Griffith initiated the present case by filing a petition for post-conviction relief on March 18, 2013. (R., pp. 4-9.) In his petition Griffith alleged his counsel rendered ineffective assistance before trial by failing to adequately advise him regarding a plea offer by the state that he ultimately refused, and rendered ineffective assistance at trial by not calling him and Scott Lee Hill as witnesses. (R., p. 6.) Griffith supported the petition with affidavits of Hill asserting that if called at trial he would have testified that he saw the victim's older sister treating

the victim roughly shortly before the victim sustained his fatal injuries. (R., pp. 19-24.)

The state moved to dismiss, asserting the petition was barred as successive and beyond the statute of limitation, and that the claims were unsupported by evidence. (R., pp. 25-26.) The district court denied Griffith's request for counsel, finding the petition frivolous, and entered a notice of intent to dismiss on the same grounds asserted by the state. (R., pp. 27-37.<sup>1</sup>) Griffith responded with a request to amend his petition to add a claim of ineffective assistance of appellate counsel and asserting that ineffective assistance of post-conviction counsel and obtaining Hill's affidavit in 2013 justified the timing and successive nature of his petition. (R., pp. 44-73;<sup>2</sup> see also Tr., p. 9, L. 10 – p. 11, L. 16.) The district court dismissed the petition because it was successive and because it was time-barred. (R., pp. 87-93.) Griffith timely appealed from the entry of judgment. (R., pp. 95-99.)

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<sup>1</sup> Counsel later appeared on Griffith's behalf (R., pp. 1, 81) and argued the dismissal motion (Tr., p. 4, Ls. 5-6).

<sup>2</sup> The record is apparently missing pages 71 and 72, part of Griffith's affidavit.

## ISSUES

Griffith states the issues on appeal as:

- 1). Trial Counsel failed to provide an adequate explanation of all plea offers tendered by the State prior to the start of the Trial; and
- 2). Trial Counsel failed to adequately explain the possible benefits and risks associated with the plea offers; and
- 3). Trial Counsel failed to adequately advise the Petitioner as to his possibility of success in going to trial.
- ...
- 4). Trial Counsel coerced the Petitioner into waiving his right to testify and failed to put up any type of defense on his behalf;
- 5). Trial Counsel should have called Scott Lee Hill as a witness during trial.

(Appellant's brief, p. 3 (bolding deleted, otherwise verbatim).)

The state rephrases the issues as:

Has Griffith failed to identify, much less demonstrate, any error in the district court's conclusion that the petition must be dismissed as successive and untimely?

## ARGUMENT

### The District Court Properly Dismissed The Petition As Successive And Untimely

#### A. Introduction

The district court dismissed the petition because it was both successive and untimely. (R., pp. 87-93.) Griffith's appellate challenge to that dismissal fails because he has not addressed the legal grounds upon which the district court dismissed. Even if the merits of the district court's analysis are reached, despite Griffith's failure to challenge them, application of the correct legal standards to the record shows that the petition was barred as successive and as untimely.

#### B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

#### C. Griffith Has Waived Any Appellate Challenge To The District Court's Order By Failing To Present Argument Or Authority As To Why His Petition Is Not Barred As Successive And As Untimely

"A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking." State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). In this case both are lacking. Griffith presents no law or argument relevant to the bases of the district court's order dismissing the petition as successive and untimely. (See generally, Appellant's brief). Because Griffith



has failed to present any argument or authority challenging the legal bases for the district court's summary dismissal of his petition, he has waived any appellate challenge to that dismissal.

D. The Petition Was Properly Dismissed As Successive

Even if the merits of the district court's dismissal of the successive petition are considered, application of the correct legal standards shows no error. Idaho law provides that grounds "finally adjudicated or not ... raised" in an initial or amended petition for post-conviction relief generally "may not be the basis for a subsequent application." I.C. § 19-4908. Only where the petitioner can show "sufficient reason" why claims were "not asserted" or "inadequately presented in the original" case may he pursue a successive petition. Id.; Griffin v. State, 142 Idaho 438, 441, 128 P.3d 975, 978 (Ct. App. 2006) (citation omitted). Ineffective assistance of post-conviction counsel does not constitute "sufficient reason" for filing a successive petition. Murphy v. State, 156 Idaho 389, 391, 327 P.3d 365, 367 (2014).

It is undisputed that the current petition is successive. (R., p. 88.) In his petition Griffith asserted "cause and prejudice" arising from "inadequate assistance of counsel at initial-review collateral proceedings" as his basis for filing a successive petition. (R., pp. 7-8.) He specifically asserted his post-conviction counsel was ineffective for failing to appeal and for having a conflict of interests. (R., p. 6.) Because ineffective assistance of post-conviction counsel is not a basis for avoiding application of the statutory bar on successive petitions, the district court properly dismissed the petition as successive.

E. The Petition Was Properly Dismissed As Untimely

A post-conviction proceeding must 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.” I.C. § 19-4902(a). In the case of successive petitions, the Idaho Supreme Court has “recognized that rigid application of I.C. § 19-4902 would preclude courts from considering ‘claims which simply are not known to the defendant within the time limit, yet raise important due process issues.’” Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009) (quoting Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007)). Thus, previously unknown claims are not time-barred if brought within a reasonable time of when they were known or should have been known. Rhoades, 148 Idaho at 251, 220 P.3d at 1070. A criminal defendant generally has notice of the actions of his counsel, and therefore of any ineffective assistance, “immediately upon the completion of the trial.” Rhoades, 148 Idaho at 253, 220 P.3d at 1072. Moreover, the timeliness of a petition is measured “from the date of notice, not from the date a petitioner assembles a complete cache of evidence.” Charboneau, 144 Idaho at 905, 174 P.3d at 875.

The present petition was filed about six years after the conclusion of the criminal case. The district court noted that Griffith acknowledged in his affidavit knowing that Hill was a potentially favorable witness in his case prior to the trial. (R., pp. 105-06; see also p. 70 (trial attorney told him while discussing plea offer that Hill would corroborate his version of events).) Moreover, Hill, in his affidavit,

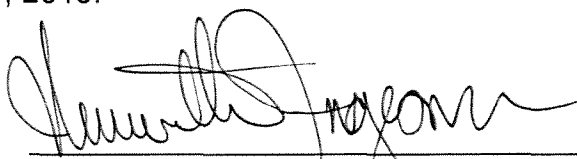
asserted that Griffith was present with him during the events to which he would have testified. (R., p. 23 (“Chris [petitioner] had to place her [Breanna, the victim’s sister] in ‘time-out’” for “hurting her brother [Tegan, the victim]”).) Griffith further stated in his verified response to the notice of intent to dismiss that he rejected the state’s plea offer because of counsel’s representation that Hill would corroborate his version of events, and was later “shock[ed]” when counsel did not call Hill at trial, stating Hill could not assist in the defense. (R., p. 47.)

Griffith’s factual claims demonstrate he had notice of his current post-conviction claims at the time of trial. Griffith knew who Hill was and the general nature of his expected testimony. He knew he rejected the state’s plea offer based in substantial part upon his counsel’s representation that Hill’s testimony would assist the defense. Finally, he knew (and was “shocked”) that trial counsel ultimately did not call Hill as a witness at trial. Because Griffith knew of the alleged actions of counsel (convincing him to reject a plea offer based on Hill’s anticipated testimony and then not calling Hill at the trial) immediately upon completion of the trial he had notice of his claims at that time. The statute of limitation was not tolled until Griffith obtained a complete cache of evidence in the form of an affidavit from Hill. The district court properly concluded that the petition was barred by I.C. § 19-4902.

CONCLUSION

The state respectfully requests this Court to affirm the district court's judgment.

DATED this 9th day of February, 2015.



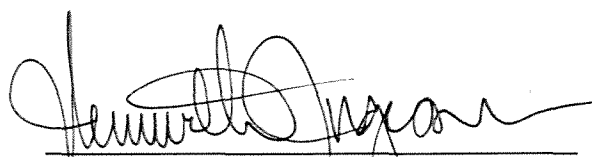
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KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of February, 2015, 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:

CHRISTOPHER D. GRIFFITH, #52664  
IDAHO STATE CORRECTIONS CENTER  
POST OFFICE BOX 70010  
BOISE, ID 83707



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KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/vr