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Macik v. State Respondent's Brief Dckt. 41705

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

RONALD LEE MACIK,)	
)	No. 41705
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2012-13953
)	
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 CHERI C. COPSEY
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Lee Macik appeals from the district court's judgment, on remand, summarily dismissing Macik's untimely petition for post-conviction relief, which was filed nearly 40 years after Macik pled guilty to first-degree murder.

Statement Of Facts And Course Of Proceedings

"In 1972, Macik pled guilty to first degree murder and the district court imposed a life sentence. Macik did not appeal, or any appeal that he filed was dismissed, as there is no record of an appeal in his case." Macik v. State, 2013 Unpublished Opinion No. 722 at p.1 (Idaho App. Oct. 24, 2013) ("Macik II").¹ In March 2011, "Macik wrote a letter to the district that was treated as a motion to withdraw his guilty plea and counsel was appointed to represent him." Id. The district court denied the motion after concluding it lacked jurisdiction to consider the merits of Macik's request. Id. The Idaho Court of Appeals affirmed and issued its remittitur on June 28, 2012. Id. (citing State v. Macik, Docket No. 39233 (Ct. App. 2012) (unpublished)).

On July 26, 2012, two months after the Court of Appeals affirmed the denial of Macik's motion to withdraw his guilty plea, Macik filed a *pro se* petition for post-conviction relief alleging (1) a court-ordered mental evaluation report was withheld from the defense; (2) a "violation of [his] Miranda rights"; and (3) his

¹ The Court has entered an order taking judicial notice of "the Clerk's Record filed in prior appeal No. 40321, Macik v. State." (R., p.2.)

guilty plea was coerced. (#40321 R., pp.3-4.) Macik also alleged counsel was not present at his change of plea hearing, he did not receive “a record of any proceeding in CR-4949 until May 27, 2009,” “another inmate confessed to committing the murder” and he “did not have a clear or sound mind.” (R., p.5.) Macik also filed a motion for the appointment of counsel, which the district court denied upon concluding “Macik’s post-conviction claims are untimely.” (#40321 R., pp.10-13, 23.) More specifically, the court noted Macik “fail[ed] to allege anything that raises the *possibility* of valid claims” since all of Macik’s claims relate to his “entry of plea on August 31, 1972, or potential suppression issues” and “do not relate to his Motion to Withdraw Plea filed March 17, 2011, thirty-eight and one-half (38½) years after pleading guilty, which th[e] Court denied on September 8, 2011.” (#40321 R., pp.23-24 (emphasis original).)

On August 22, 2012, the state filed a motion for summary dismissal, asserting that “although [Macik] did file a substantive motion in 2011, the matters in the Uniform Post-Conviction petition address proceedings that occurred in 1971-1972. Accordingly, the petition is well outside the one-year time limit established in I.C. 19-4902.” (#40321 R., pp.26-27.) The district court entered an order dismissing Macik’s petition on August 27, 2012. (#40321 R., pp.29-32.)

Two days later, Macik filed a “Motion for Leave to Amend,” arguing (verbatim):

The Petitioner was granted permission to file a direct appeal on His conviction by the Idaho Court’s of Appeals, and that direct appeal was denied. Petition now seeks to file an original Post-Conviction Petition as provided by law, upon his conviction based on allegations of ineffective assistance of counsel and other matters, which will be more defined in an amended petition.

Petitioner originally predicated that counsel would be appointed and his counsel would amend the petition according to prerequisites of the Court. However, counsel has been denied and Petitioner must now conform his Petition without the benefit of counsel, and prays this Honorable Court will permit Petitioner the right pursuant to the Act, to amend His petition before dismissal so that proper evidence and allegations can be submitted for the courts review, as counsel is not available to do so.

The Petitioner requests permission to file documents, affidavit's, transcripts, and other material evidence in support of His claims. He is unschooled in the law, has limited resources and it would be a manifest injustice to determine the merits of his claims without giving Him the opportunity to amend pursuant to statutory mandate.

(#40321 R., pp.33-34.)

The court denied Macik's motion because Macik failed to "present any good cause as to why any new claims exist that could not have been included in the Petition" and because Macik failed to "identify what, if any, new claims he might have." (#40321 R., p.36.) The court also reiterated that Macik's "underlying criminal case is nearly forty (40) years old." (Id.) The court entered judgment on August 30, 2012, from which Macik filed a timely notice of appeal.

(#40321 R., pp.38-43.)

On appeal, Macik claimed the district court erred by dismissing his petition without first providing him 20 days to respond to the state's motion to dismiss. (#40321, Appellant's Brief, p.4.) The Court of Appeals agreed and reversed the summary dismissal order and remanded the case back to the district court for further proceedings. Macik II at pp.2-3.

On November 8, 2013, fifteen days after the Court of Appeals issued its opinion in Macik II, remanding this case, Macik filed an affidavit explaining that,

in 1969, he underwent a psychiatric evaluation and the evaluator recommended treatment “in the appropriate environment” and “predicted that if [Macik] was sent into a prison setting without first being allowed the opportunity to receive and benefit from the recommended treatment,” there would be a “clash between [Macik’s] personality and the prison environment.” (R., p.5.) According to Macik, the “court ignored [the] report” and sent him to prison.” (R., p.5.) Macik further noted he was medicated and transferred to an out-of-state prison “with no access to Idaho law and well before [his] due process rights were expired.” (R., p.6.) According to Macik, in September 2007, he suffered a stroke which resulted in an “extraordinary unexplained ability to remember most everything that occurred in [his] life during the period of time that [he] was forced to ingest ‘Thorazine.’” (R., p.6.) Macik concluded that the prosecutor, judge and his lawyer “were all aware of [his] nearly catatonic state of mind and allowed [him] to be processed through the court system with no evidence that could support or justify such a severe degree of charge and conviction.” (R., p.6.) Along with his affidavit, Macik filed a motion for the appointment of counsel. (R., p.8.)

On November 27, 2013, the district court entered an order denying Macik’s request for counsel. (R., pp.10-20.) On December 10, 2013, the district court entered an order conditionally dismissing Macik’s petition and notified Macik he had 20 days to respond. (R., pp.41-51.) The only response Macik filed was a notice of appeal from the court’s order denying his request for the appointment of counsel. (R., pp.72-76.) On January 7, 2014, 28 days after notifying Macik of its intent to dismiss, the district court dismissed Macik’s petition

and entered a final judgment. (R., pp.77-89, 91; see p.142 (Corrected Final Judgment).) Macik filed a timely notice of appeal. (R., pp.93-97.) Macik also requested the appointment of counsel on appeal, which the district court denied. (R., pp.104-107, 109-119.)

ISSUE

Macik states the issue on appeal as:

- I. WHETHER THE DISTRICT COURT ERRED IN DISMISSING MR. MACIK'S PETITION WITHOUT APPLYING AN ACTUAL INNOCENCE STANDARD AND/OR ALLOWING AN AMENDMENT PRIOR TO DISMISSAL?

- II. WHETHER THE DISTRICT COURT ERRED IN DETERMINING THAT MR. MACIK'S PLEA WAS KNOWING; WILLING; AND WITHOUT DURESS?

(Appellant's Brief, p.i (capitalization and punctuation original).)

The state rephrases the issue on appeal as:

Has Macik failed to show error in the summary dismissal of his untimely post-conviction petition?

ARGUMENT

Macik Has Failed To Establish Error In The Summary Dismissal Of His Untimely Post-Conviction Petition

A. Introduction

The district court dismissed Macik's petition as untimely. (R., pp.6-88.) On appeal, Macik claims the district court erred because it failed to apply an "actual innocence exception" to the statute of limitations for filing a post-conviction petition. (R., pp.19-24.) Macik also claims error in the district court's alleged finding that Macik's guilty plea was voluntary. (R., pp.25-29.) Application of the correct legal standards to the facts of this case shows the district court properly dismissed Macik's petition on the basis that it was untimely. Macik's claim of error regarding the voluntariness of his guilty plea fails because the court made no such finding. Macik has failed to show any error in the summary dismissal of his untimely post-conviction petition.

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. Macik Has Failed To Show Error In The Summary Dismissal Of His Untimely Petition

“Prior to 1979, applications for post-conviction relief could be filed at any time.” LaFon v. State, 119 Idaho 387, 388, 807 P.2d 66, 67 (Ct. App. 1991). In 1979, the legislature amended I.C. § 19-4902 to impose a five-year statute of limitation, and the Court of Appeals “ruled that the five-year statute of limitation applies to applications for relief from convictions entered before 1979.” Id. “In such cases, the five-year limitation period began to run on July 1, 1979, the effective date of the amendment.”² Id. at 389, 807 P.2d at 68 (citation omitted). Thus, Macik had until July 1, 1984, to file his post-conviction petition. Macik did not, however, file his petition until 28 years later. (R., p.3.)

The failure to file a timely petition for post-conviction relief is a basis for dismissal of the petition. Evensiosky v. State, 136 Idaho 189, 190-191, 30 P.3d 967, 968-969 (2001). However, “[i]n Idaho, equitable tolling of the statute of limitation for filing a post-conviction petition has been recognized” in two circumstances: (1) “where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials;” and (2) “where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction.” Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009) (citations omitted).

² Idaho Code Section 19-4902 has since been amended and now provides for a one-year limitation period.

Nowhere in his petition or supporting affidavit did Macik explain why his petition was not filed until decades after he pled guilty. (See generally #40321 R., pp.3-9.) Nor did Macik provide any explanation in his Motion for Leave to Amend. (See generally #40321 R., pp.33-34.) On remand, however, it appears Macik attempted to rely on his Thorazine use and out-of-state incarceration as a basis for tolling. (R., pp.5-6.) The district court, assuming the truth of Macik's assertions, concluded such circumstances would only toll the statute of limitation until Macik had the benefit of counsel, which "occurred more than one year before he initiated the present action." (R., p.86 (emphasis original).) Specifically, "[t]he Court appointed counsel in [Macik's] underlying case upon his motion on April 27, 2011" but Macik did not file his post-conviction petition until July 26, 2012, "more than a year later." (R., p.87.) Thus, the district court concluded that "[s]ince Macik did not file his post-conviction application within one year of gaining the ability to access the Idaho courts through his counsel, his application is barred by the limitation period of I.C. § 19-4902." (R., p.87.)

With respect to Macik's reliance on Thorazine as a basis for tolling, the district court noted the statute of limitation would only be tolled "until Macik [was] competent to understand his legal right to bring an action." (R., p.87.) However, Macik's "own affidavit, as well as the record, establishes that he was competent to understand his legal right to bring action. According to [Macik's] own statements, *even assuming Thorazine affected his ability to file a post-conviction petition*, he was only on Thorazine from October 1, 1969 until December 1972, shortly after pleading guilty." (R., p.87 (emphasis original).) "Furthermore, from

at least 1994, Macik understood he could bring a post-conviction action” as evidenced by his letter to the Honorable Duff McKee, in which Macik references his desire to pursue post-conviction relief. (R., pp.29, 88.) The record also shows Macik corresponded with the Ada County Public Defender’s Office in 1994 and with the clerk of court in 2009 about obtaining copies of records. (R., pp.35-36.) “[T]he most important evidence,” noted the district court, is the allegation in Macik’s affidavit that, in September 2007, he regained the “extraordinary unexplained ability to remember most everything that occurred in [his] life during the period of time that [he] was forced to ingest ‘Thorazine.’” (R., p.88 (quoting R., p.6) (alterations added).) From this “abundant evidence,” the Court found “that neither Macik’s mental illness nor the limited use of Thorazine so impaired his functioning as to render him incapable of bringing a post-conviction action from at least sometime in 2007.” (R., p.88 (emphasis original).) “[E]ven if he suffered from mental illness, once th[e] Court appointed counsel, the statute was no longer tolled.” (R., p.88.)

On appeal, Macik does not challenge the district court’s determinations regarding tolling, but instead claims the court should have applied the “actual innocence exception” for federal habeas petitions to the statute of limitation for state post-conviction actions rather than recognized principles of equitable tolling. (Appellant’s Brief, pp.19-24.) Because Macik does not assert error in the standards applied by the district court, to the extent this Court rejects Macik’s actual innocence argument, as it should, it can affirm the district court’s order on the unchallenged bases. 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 noted, Macik's actual innocence argument rests upon standards applicable in federal habeas cases. (Appellant's Brief, pp.19-24.) Specifically, in federal habeas cases, courts may consider procedurally defaulted claims if the petitioner can establish "actual innocence." A demonstrated claim of actual innocence can also excuse the failure to comply with the federal statute of limitation. McQuiggin v. Perkins, 133 S.Ct. 1924 (2013). Under the federal standard, the burden is on the petitioner to demonstrate "that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Schlup v. Delo, 513 U.S. 298, 327 (1995). The Idaho Supreme Court has essentially already rejected the argument Macik is advancing.

In Fields v. State, 151 Idaho 18, 21-22, 253 P.3d 692, 695-696 (2011), the Court noted that Schlup, and the Supreme Court's opinion in House v. Bell, 547 U.S. 518 (2011), "address[[ed] the showing required for a federal habeas petitioner to avoid a procedural bar to the consideration of his constitutional claims. The Court was not setting forth a requirement applicable to state claims for post-conviction relief." Because neither Schlup nor Bell apply to state post-conviction actions, presumably neither would Perkins, and it would be error to excuse the state statute of limitation based on a claim of actual innocence. See Fields, 151 Idaho at 22, 253 P.3d at 696.

Further, even if there was an actual innocence exception to the statute of limitation for post-conviction relief, whether a case involving a guilty plea to a

legally valid offense qualifies as an “extraordinary” case for purposes of the actual innocence gateway is an open question in the context of federal habeas. See Bousley v. United States, 523 U.S. 614, 629-36 (1998) (Scalia, J., dissenting); Smith v. Baldwin, 510 F.3d 1127, 1140 n.9 (9th Cir. 2007) (noting “the potential incongruity between the purpose of the actual innocence gateway announced in Schlup and its application to cases involving guilty (or no contest) pleas”) (citing Bousley). In any event, Macik’s claim of innocence falls far short of meeting the Schlup standard even if such a standard applied in Idaho. The fact that he claims to have remembered, more than 30 years after the fact, that he is not guilty does not demonstrate innocence, much less satisfy the demanding standard under Schlup. See House, 547 U.S. at 537-538 (quoting Schlup, supra) (in evaluating the evidence offered in support of an actual innocence claim, a court “need not ‘test the new evidence by a standard appropriate for deciding a motion for summary judgment,’ but rather may ‘consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence’”).

Macik’s second issue on appeal revolves around his perception that the district court made a finding that Macik’s plea was not knowing and voluntary. (See generally Appellant’s Brief, pp.25-29.) While the court noted that the trial judge “accepted [Macik’s] guilty plea as knowing and voluntary” (R., p.78), it does not appear the district court made an independent finding of its own in that respect (see generally R., pp.77-89). To the extent Macik’s argument on this point is intended as a challenge to the district court’s alternative finding that

Macik failed to allege a genuine issue of material fact in relation to any of the claims in his petition (R., pp.78, 89), the Court need not address this claim because the petition was properly dismissed on the grounds that it was untimely. Even if considered, Macik has failed to identify any genuine issue of material fact that entitled him to an evidentiary hearing on claims related to his 40-year-old guilty plea.

Macik has failed to demonstrate any error in the summary dismissal of his untimely post-conviction petition.³

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Macik's petition for post-conviction relief.

DATED this 28th day of November 2014.



JESSICA M. LORELLO
Deputy Attorney General

³ This Court may wish to note that it appears Macik has raised the same claims he has raised in this appeal in the appeal that is pending from the denial of his successive petition for post-conviction relief. Macik v. State, Docket No. 41154.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 28th day of November 2014, served a true and correct copy of the attached RESPONDENT'S BRIEF by placing the copy in the United States mail, postage prepaid, addressed to:

Ronald Lee Macik, #12680
ISCC J-110-B
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