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Ashley v. State Respondent's Brief Dckt. 41719

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

ANTHONY ASHLEY,)
)
 Petitioner-Appellant,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
_____)

No. 41719

Ada Co. Case No.
CV-2012-11921

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 TIMOTHY L. HANSEN
District Judge

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PETITIONER-APPELLANT**

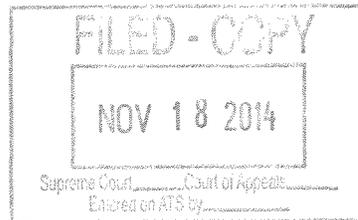


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STATEMENT OF THE CASE

Nature Of The Case

Anthony Ashley appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

The district court set forth the relevant facts as follows:

Petitioner Anthony Ashley was charged with six felony counts of Unlawful Possession of a Firearm (Counts I, VII, VIII, IX, X, and XI), five felony counts of Grand Theft by Possession of Stolen Property (Counts II, III, IV, V, and VI), and one misdemeanor count of Petit Theft by Possession of Stolen Property (Count XII). Petitioner entered pleas of not guilty to all twelve counts, and an Information Part II was filed, charging Petitioner as a persistent violator of the law. A jury trial was held on July 19, 20, 21, 22, and 26, 2010. On July 26, 2010, the jury returned verdicts of guilty as to all twelve counts, and Petitioner entered a guilty plea to the Information Part II. Pursuant to a Judgment of Conviction and Commitment entered on November 4, 2010, Petitioner was sentenced to the custody of the Idaho State Board of Correction for aggregate terms of five years with five years fixed for each of Counts I, VII, VIII, IX, X, and XI; aggregate terms of ten years with ten years fixed for each of Counts III, IV, V, and VI; an aggregate term of thirty years with fifteen years fixed for Count II; and an aggregate term of one year with one year fixed for Count XII, with all counts to run concurrently with each other. Pursuant to an unpublished opinion filed on February 1, 2012, the Idaho Court of Appeals affirmed Petitioner's judgment of conviction and sentences.

On July 2, 2012, Petitioner filed a Petition and Affidavit for Post Conviction Relief. The State's Answer to Petition for Post-Conviction Relief was filed on August 1, 2012. On May 20, 2013, the State filed a Motion for Summary Dismissal, along with a supporting memorandum. On the same date, the State also filed a Motion for Order Taking Judicial Notice of Materials Including But Not Limited to the Record, Transcripts, and PSI, etc. Petitioner's Memorandum in Opposition to Summary Dismissal was filed on June 17, 2013, along with a supporting affidavit of Petitioner. On

June 21, 2013, the State filed a Response to Petitioner's Memo in Opposition to Summary Dismissal.

(R., pp.300-301.)

The district court granted the state's motion for summary dismissal following a hearing. (R., pp.300-307.) Ashley timely appealed from the judgment. (R., pp.308, 309-312.) Counsel was initially appointed to represent Ashley in his appeal of the summary dismissal of his petition for post-conviction relief. (R., pp.315-316.) Upon motion of appellate counsel, the Court allowed appointed counsel to withdraw to allow Ashley to proceed *pro se* as per his request. (7/9/14 Order Granting Leave to Withdraw as Counsel and to Suspend the Briefing Schedule.)

ISSUE

Ashley states the issue on appeal as:

Whether the district court erred when it summarily dismissed my post-conviction petition[.]

(Appellant's brief, p.5 (original capitalization modified).) Ashley also lists 11 separate claims, eight of which mirror his original petition for post-conviction relief. (Id.) Given the length of those claims, they are not repeated here.

The state rephrases the issue as:

Has Ashley failed to establish that the district court erred in summarily dismissing his petition for post-conviction relief?

ARGUMENT

Ashley Has Failed To Show That The District Court Erred In Summarily Dismissing His Petition For Post-Conviction Relief

A. Introduction

Ashley challenges the district court's summary dismissal of his post-conviction petition. Ashley's challenge fails because he fails to identify any viable claim of error in the district court's decision.

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. Ashley Has Failed To Establish The District Court Erred In Summarily Dismissing His Petition For Post-Conviction Relief

On appeal, Ashley reiterates the eight specific claims listed in his original petition for post-conviction relief:

1. Ineffective assistance of counsel during criminal case and appeal[.]
2. That the prosecutor used false testimony that she knew or had reason to believe was false[.]
3. The police or prosecutor withheld [sic] favorable evidence information from the defence [sic][.]
4. The sentence is cruel [sic] and unusual and disproportionate [sic] to the offence [sic] for which the petitioner was convicted[.]
5. The conviction is in violation of the constitution of the United States[.]

6. There is evidence of material facts not previously presented and heard that would require the vacation of the conviction in the interest of justice[.]

7. The prosecution has not proven its case[.] Nearly every witness has contradicted themselves and each other[.]

...

11. No fingerprints or scientific tests[.]

(Appellant's brief, p.5 (original capitalization modified) (compare to original petition, R., pp.6-8).) Additionally, Ashley contends on appeal that the judge and jury were biased and there was prosecutorial misconduct. (Appellant's brief, p.5.) These three claims were initially listed throughout Ashley's affidavit in support of his petition for post-conviction relief. (See generally, R., pp.13-54.) In its memorandum decision and order summarily dismissing Ashley's petition, the district court addressed all eleven of Ashley's claims and found they were either improperly pursued under the UCPCA or did not raise a genuine issue of material fact. (R., pp.301-307.)

Although Ashley claims on appeal that the district court erred in summarily dismissing his petition for post-conviction relief, his argument fails to address any of the district court's findings or how the court erred in its dismissal. Instead, Ashley compares the modern prison system to prison camps in Nazi Germany. (See Appellant's brief, pp.6-7.) Additionally, Ashley has failed to support his claim that the court erred in summarily dismissing his petition for post-conviction relief with any relevant legal authority. (Id.) Ashley has therefore not offered any argument, cogent or otherwise, to challenge the district court's rulings. It is well settled that a party waives an issue on appeal if either authority or argument is

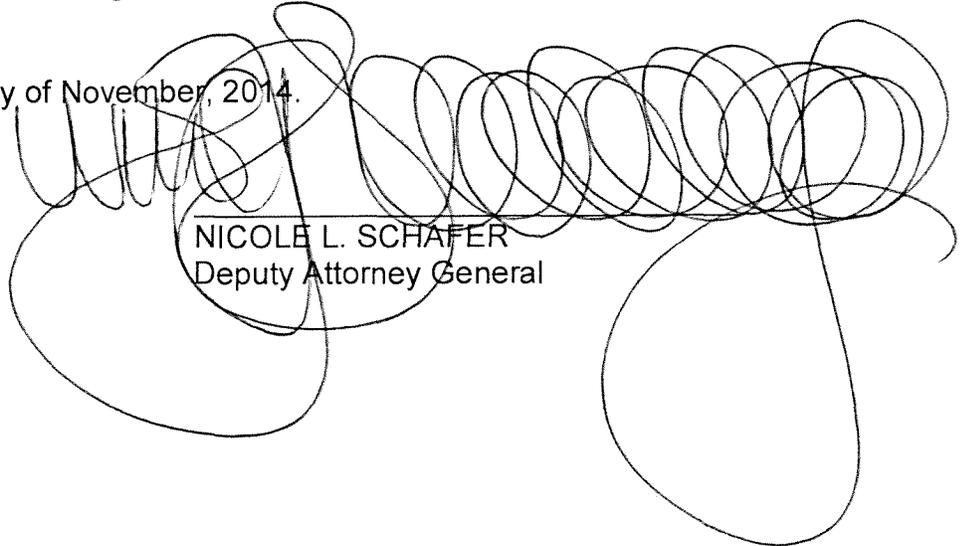
lacking. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Although Ashley contends “the whole record needs to be examined” for violations committed against him at trial (Appellant’s brief, p.5A), it is also well settled that the appellate court will not review actions of the district court for which no error has been assigned and will not otherwise search the record for errors. State v. Hoisington, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983).

Because Ashley has failed on appeal to identify any viable claim of error in the district court’s actions and has otherwise failed to cite any relevant legal authority or make any cogent argument to support any claim of error, he has waived appellate review of any such claim and has thereby failed to show any error in the summary dismissal of his post-conviction petition.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s order and judgment summarily dismissing the petition for post-conviction relief.

DATED this 18th day of November, 2014.

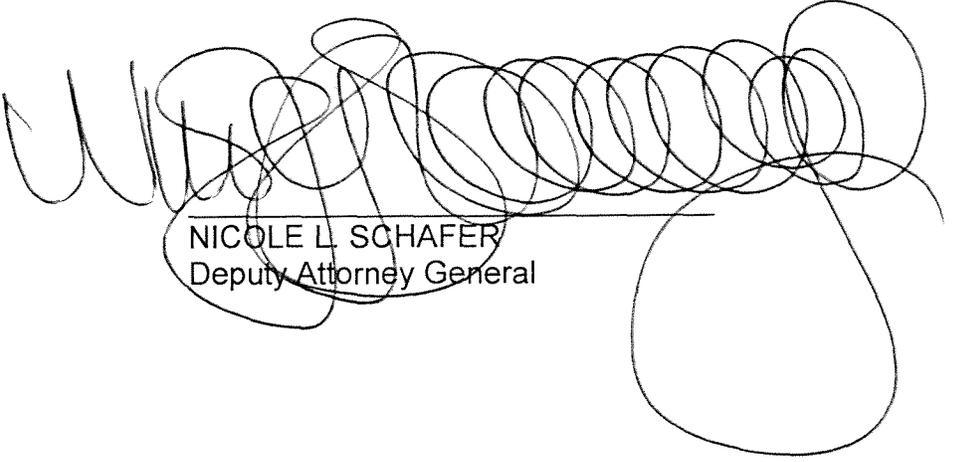


NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 18th day of November, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

ANTHONY ASHLEY
IDOC #41071
IMSI B-3
PO Box 51
Boise, Idaho 83707

A large, complex handwritten signature in black ink, consisting of many overlapping loops and swirls, positioned over the typed name and title of the signatory.

NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm