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Bell v. State Respondent's Brief Dckt. 41819

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

JUSTIN IRVEN BELL,)	
)	No. 41819
Petitioner-Appellant,)	
)	Gooding Co. Case No.
vs.)	CR-2013-571
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

HONORABLE ERIC J. WILDMAN
District Judge

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Supreme Court _____ Court of Appeals _____
Entered on A/S by _____

ATTORNEYS FOR
RESPONDENT

PRO SE
PETITIONER-APPELLANT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	3
ARGUMENT	4
Bell Has Failed To Show Error In The District Court's Order Denying Bell's Motion For Counsel To Pursue His Untimely Petition For Post-Conviction Relief.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. Bell Was Not Entitled To Counsel To Pursue His Untimely Petition For Post-Conviction Relief	5
CONCLUSION	9
CERTIFICATE OF SERVICE.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Amboh v. State</u> , 149 Idaho 650, 239 P.3d 448 (Ct. App. 2010).....	8
<u>Brown v. State</u> , 135 Idaho 676, 23 P.3d 138 (2001).....	5
<u>Charboneau v. State</u> , 140 Idaho 789, 102 P.3d 1108 (2004)	5
<u>Chico-Rodriquez v. State</u> , 141 Idaho 579, 114 P.3d 137 (Ct. App. 2005)	7
<u>Gilpin-Grubb v. State</u> , 138 Idaho 76, 57 P.3d 787 (2002).....	4
<u>Hust v. State</u> , 147 Idaho 682, 214 P.3d 668 (Ct. App. 2009).....	5
<u>Judd v. State</u> , 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009)	7
<u>Leer v. State</u> , 148 Idaho 112, 218 P.3d 1173 (Ct. App. 2009).....	7
<u>Pennsylvania v. Finley</u> , 481 U.S. 551 (1987).....	5
<u>Schultz v. State</u> , 151 Idaho 383, 256 P.3d 791 (Ct. App. 2011)	7
<u>Swader v. State</u> , 143 Idaho 651, 152 P.3d 12 (2007).....	5
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007).....	4, 5, 6
 <u>STATUTES</u>	
I.C. § 19-4901.....	5
I.C. § 19-4902.....	2, 6
I.C. § 19-4904.....	4, 5
I.C. § 19-4906.....	5, 6

STATEMENT OF THE CASE

Nature Of The Case

Justin Irven Bell appeals from the district court's order summarily dismissing his untimely petition for post-conviction relief. On appeal, he asserts that equitable tolling should apply to his petition and therefore the district court erred by denying his motion to appoint counsel to pursue his untimely petition.

Statement Of The Facts And Course Of The Proceedings

The factual and procedural history for this case, as set forth by the district court, is as follows:

1. On September 6, 2011, an Information Part I was filed in the matter of the *State of Idaho v. Justin Irven Bell*, Gooding County Case No. CR-2011-1805, charging Petitioner with one count of Eluding an Officer, Idaho Code § 49-1404(2)(a), a felony. On that same date, an Information Part II was filed in that same matter, charging Petitioner as a Persistent Violator, Idaho Code § 19-2514, a felony.

2. On November 1, 2011, the Petitioner pled guilty to the charge of Eluding an Officer, a felony, pursuant to a written plea agreement filed on that same date.

3. On January 23, 2012, a *Judgment of Conviction and Order of Commitment* was entered on the charge of Eluding an Officer, a felony. The Court imposed a unified sentence of five (5) years consisting of a fixed term of one (1) year, followed by an indeterminate period of four (4) years, provided however, the Court retained jurisdiction for a period of 365 days.

4. On May 21, 2012, the Court entered its *Order of 180 Day Review*, wherein the Court directed that the Petitioner be placed on supervised probation for a period of three (3) years.

5. On February 25, 2013, a *Motion to Revoke Probation* was filed. Following an admit/deny hearing held on February 26, 2012, the

Court entered an *Order* revoking probation and imposing the original sentence.

6. On October 17, 2013, a *Rule 35 Motion* was filed by the Petitioner in Gooding County Case No. CR-2011-1805 seeking modification of the *Judgment of Conviction*. The Court entered an *Order* denying the *Rule 35 Motion* on November 1, 2013.

7. No appeal was taken from the *Judgment of Conviction*.

8. On December 5, 2013, the Petitioner filed his *Petition* in the above-captioned matter. The *Petition* alleges that the appointed public defender rendered ineffective assistance of counsel by erroneously advising the Petitioner to plead guilty in the underlying criminal [case]. Further, that the Petitioner is innocent of the crime of Eluding an Officer, a felony, on the grounds that the State could not prove that the Petitioner was travelling in excess of thirty (30) miles per hour above the posted speed limit. Last, that the State improperly used the Idaho Code § 19-2514 persistent violator charge to threaten and coerce Petitioner into the *Plea Agreement* dated November 1, 2011. The Petitioner requests (1) the appointment of counsel to represent him in this case, and (2) that this Court allow him to withdraw his plea of guilty in Gooding County Case No. CR-2011-1805.

(R., pp.54-55.)

Noting that Bell failed to file his petition for post-conviction relief within the time limits proscribed by Idaho Code § 19-4902, the district court issued its notice of intent to dismiss the petition and denied Bell's request for counsel. (Notice of Intent to Dismiss Post-Conviction Petition (Augment).)¹ Bell responded to the notice, proposing that equitable tolling should apply to his petition. (R., pp.58-61.) The district court declined Bell's request and dismissed the petition. (R., p.93; Order Dismissing Post-Conviction Petition (Augment).) Bell appealed. (R., pp.67-70.)

¹ The district court's notice of intent to dismiss and order dismissing Bell's petition are incomplete in the clerk's record. Contemporaneous with the filing of this brief, the state has filed a motion to augment the record with complete copies of these records.

ISSUE

Bell states the issue on appeal as:

1. Did the district court err in denying counsel based on petitioner's ability to demonstrate that equitable tolling or doctrines of estoppel may apply to the case?

(Appellant's brief, p.5 (capitalization modified).)

The state rephrases the issue as:

Has Bell failed to show error in the district court's order denying Bell's motion for counsel to pursue his untimely petition for post-conviction relief?

ARGUMENT

Bell Has Failed To Show Error In The District Court's Order Denying Bell's Motion For Counsel To Pursue His Untimely Petition For Post-Conviction Relief

A. Introduction

Bell filed his petition for post-conviction relief on December 5, 2013, almost two years after judgment was entered in his underlying criminal case. (See R., pp.3, 54-55.) The district court issued its notice of intent to dismiss Bell's petition because it was untimely, and denied Bell's request for appointed counsel. (Notice of Intent (Augment).) More than 20 days later, the district court dismissed the petition. (R., p.93; Order Dismissing Petition (Augment).) On appeal, Bell asserts that the district court erred by denying his request for counsel, arguing that the court should have extended equitable tolling to his petition for post-conviction relief. (Appellant's brief, pp.6-13.) Bell has failed to show the possibility that his petition merits equitable tolling. The district court's order dismissing Bell's untimely post-conviction petition and denying his motion to appoint counsel to pursue that untimely petition should be affirmed.

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 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)).

A request for appointment of counsel in a post-conviction proceeding is governed by Idaho Code § 19-4904. "The decision to grant or deny a request for court-appointed

counsel lies within the discretion of the district court.” Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); see also Hust v. State, 147 Idaho 682, 683, 214 P.3d 668, 669 (Ct. App. 2009). In reviewing the denial of a motion for appointment of counsel in post-conviction proceedings, “[t]his Court will not set aside the trial court’s findings of fact unless they are clearly erroneous. As to questions of law, this Court exercises free review.” Charboneau, 140 Idaho at 792, 102 P.3d at 1111 (quoting Brown v. State, 135 Idaho 676, 678, 23 P.3d 138, 140 (2001)).

C. Bell Was Not Entitled To Counsel To Pursue His Untimely Petition For Post-Conviction Relief

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* There is no constitutional right to counsel in post-conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). A court may, however, appoint counsel for an indigent post-conviction petitioner in certain circumstances pursuant to Idaho Code § 19-4904. But the court is only required to appoint counsel when a petitioner “alleges facts showing the possibility of a valid claim that would require further investigation on the defendant’s behalf.” Swader v. State, 143 Idaho 651, 654, 152 P.3d 12, 15 (2007); Charboneau, 140 Idaho at 793, 102 P.3d at 1112. Where there is no possibility that the petitioner’s claims could be developed into viable claims, with or without counsel’s assistance, the court may deny the request for counsel and proceed with the usual procedure for dismissing the meritless post-conviction petition. Workman, 144 Idaho at 529, 164 P.3d at 809; Hust, 147 Idaho at 684, 214 P.3d at 670.

Under Idaho Code § 19-4906:

When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, [sic] direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

I.C. § 19-4906(b); see also Workman, 144 Idaho at 523, 164 P.3d at 803.

Adhering to the procedures set forth in Idaho Code § 19-4906, the district court denied Bell's request for counsel and gave notice of its intent to dismiss Bell's post-conviction petition because it was untimely. (Notice of Intent (Augment).) To be timely, 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). Judgment was entered against Bell in his underlying criminal case on January 23, 2012. (R., pp.3, 54.) Bell did not appeal. (R., pp.4, 55.) Almost two years later, Bell filed his petition for post-conviction relief on December 5, 2013. (R., pp.3, 55.) Bell's petition was clearly untimely under Idaho Code § 19-4902.

Bell argues that he was entitled to counsel because he raised the possibility of a valid claim that his petition was due equitable tolling. (Appellant's brief, pp.6-7.) In fact, Bell did not raise even the possibility that equitable tolling should apply to his petition. Responding to the district court's notice of intent to dismiss and order denying his request for counsel, Bell claimed, *inter alia*, to have "continuously been on mind-altering medications," specifically prescription medications Effoxor and Lamictal, and requested

equitable tolling. (R., pp.58-61.) The district court rejected Bell's request for equitable tolling because the record showed that the medications Bell was taking did not prevent him from timely filing his petition. During his plea colloquy Bell explained that he was on Effoxor, that it was only a mood stabilizer, and that it had "no effect on his ability to make reasoned and informed decisions." (R., p.65.) Lamictal, the court explained, is also a mood stabilizer. (Id.) Because neither medication prevented Bell from timely filing his petition for post-conviction relief, the district court declined the request for equitable tolling and, more than 20 days after issuing its notice, correctly dismissed the petition because it was untimely. (See R., pp. 64-65, 93.)

On appeal, Bell does not challenge the district court's determination that taking mood stabilizers did not entitle him to equitable tolling. (See Appellant's brief.) Instead, Bell now argues that he should have been granted equitable tolling because he is untrained in the law. (Appellant's brief, pp.6-12.) "[T]he bar for equitable tolling for post-conviction actions is high." Chico-Rodriguez v. State, 141 Idaho 579, 582, 114 P.3d 137, 140 (Ct. App. 2005). "Equitable tolling for post-conviction actions 'is borne of the petitioner's due process right to have a meaningful opportunity to present his or her claims.'" Schultz v. State, 151 Idaho 383, 385-86, 256 P.3d 791, 793-94 (Ct. App. 2011) (quoting Leer v. State, 148 Idaho 112, 115, 218 P.3d 1173, 1176 (Ct. App. 2009)). Idaho appellate courts have allowed for equitable tolling in circumstances where the petitioner is incarcerated out-of-state without access to representation or Idaho legal materials; where his mental illness or medications render him incompetent and prevent him from timely challenging his conviction; or where the petitioner's claim is based on newly discovered evidence. Judd v. State, 148 Idaho 22, 25-26, 218 P.3d 1,

4-5 (Ct. App. 2009). Courts, however, “have not permitted equitable tolling where the post-conviction petitioner’s own lack of diligence caused or contributed to the untimeliness of the petition.” Amboh v. State, 149 Idaho 650, 653, 239 P.3d 448, 451 (Ct. App. 2010) (citations omitted).

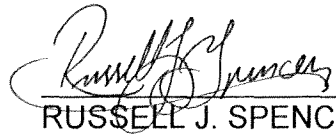
Bell was not housed out-of-state without access to Idaho legal materials. Rather, Bell acknowledges that he has been “within the custody of the Idaho State Board of Corrections [sic] with its’ [sic] skimpy and rudiment idea of legal access or resources.” (Appellant’s brief, p.11.) He is not on medications which render him incompetent and unable to file a timely petition. (See R., p.65.) Rather, he is simply “an undereducated, simple-minded farm boy with an alcohol problem.” (Appellant’s brief, p.6.) His petition for post-conviction relief was not based on newly discovered evidence. Bell was not prevented from filing a timely petition for post-conviction relief; his untimely filing was caused by his lack of diligence. His untimely petition for post-conviction relief is not entitled to equitable tolling and the district court correctly denied his motion to appoint counsel to pursue that untimely petition.

This Court should decline to extend equitable tolling to this case. Bell’s post-conviction petition was untimely and the district court correctly summarily dismissed the petition on this ground. Bell failed to present even the possibility that there was a basis upon which to apply equitable tolling to his untimely petition. The district court therefore correctly denied Bell’s motion for appointed counsel. The district court’s order summarily dismissing Bell’s petition and denying his motion for appointed counsel should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order dismissing Bell's untimely petition for post-conviction relief and denying Bell's motion for counsel to pursue that untimely petition.

DATED this 13th day of August, 2014.

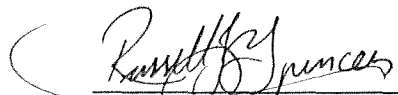


RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of August, 2014, served true and correct copies of the attached BRIEF OF RESPONDENT by placing two copies in the United States mail, postage prepaid, addressed to:

JUSTIN IRVEN BELL
IDOC #40781
SICI MCU
Boise, Idaho 83707



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm