11-17-2014

Clyne v. State Respondent's Brief Dckt. 42054

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

HEATH CLYNE,	)	
	)	No. 42054
Petitioner-Appellant,	)	
	)	Ada Co. Case No.
vs.	)	CV-2013-17613
	)	
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

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District Judge

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Nature Of The Case

Heath Clyne appeals from the judgment dismissing his petition for post-conviction relief.

Statement Of Facts And Course Of Proceedings

In 2012, Clyne pled guilty to burglary and the state dismissed three other charges against him. (R., p.11.) Pursuant to the plea agreement, the state agreed to recommend probation with an underlying unified five-year sentence with one year fixed. (R., p.79 (Tr., p.7, Ls.19-22).) The district court imposed a five-year sentence with one year fixed but retained jurisdiction instead of placing Clyne on probation. (R., p.12.) At the conclusion of the review period, the court relinquished jurisdiction and ordered Clyne's sentence executed. (R., pp.15-17.)

Approximately seven months after the court relinquished jurisdiction, Clyne filed a *pro se* petition for post-conviction relief. (R., pp.4-10.) In his petition, Clyne alleged the following claims: (1) conflict of interest; (2) his crime should have been reduced to a misdemeanor; (3) his "punishment does not fit the crime"; (4) a denial of due process for failing to hold a jurisdictional review hearing; (5) "unlawful denial of [his] rule 35 motion"; (6) he is being held beyond his fixed term; and (7) ineffective assistance of counsel. (R., pp.5-6.) Clyne filed a motion for the appointment of counsel, which the court granted. (R., pp.25-27, 42.)

The state filed an answer and a separate motion for summary dismissal, and the district court entered a notice of intent to dismiss Clyne's petition for the reasons set forth in the state's motion. (R., pp.30-40, 61.)

Clyne, through counsel, filed a motion to amend his petition. (R., pp.63-66.) Clyne's motion to amend did not state reasons why amendment should be permitted, but instead set forth revised claims for relief. (R., p.63 (stating petitioner "moves the court for leave to amend the previous Petition for Post Conviction Relief, on file with this Court, by asserting the following claims for relief").) Clyne's motion to amend included three claims for relief: (1) ineffective assistance of counsel for failing to "properly investigate and obtain evidence in mitigation of the crime; to wit; a mental health evaluation that complied with the requirements of Idaho Code 19-2522, 19-25-2523 [sic] and 19-2524" and by failing to "present any possible reasonable plan for probation that included mental health treatment in the community"; (2) a due process violation based on the court's failure to order a mental health evaluation "[d]espite the request of the State of Idaho for a proper psychological evaluation"; and (3) ineffective assistance of counsel for failing to "properly interview the petitioner and correctly present facts and arguments to the court in mitigation of the crime," to include a "reasonable plan for probation, with mental health treatment in the community." (R., pp.64-66.) In support of his motion to amend, Clyne "relie[d] upon the

transcript of the sentencing hearing," which he attached to his motion.[1] (R., p.66.) The court denied Clyne's motion to amend after hearing oral argument on Clyne's request. (Tr., pp.13-29; see R., pp.90-91.)

After his motion to amend was denied, Clyne filed an Objection to Summary Dismissal and Cross Motion for Summary Judgment ("Objection"). (R., pp.97-105.) The court subsequently entered an order granting the state's motion for summary dismissal and denying Clyne's cross-motion for summary judgment. (R., pp.107-108.) The court also entered judgment dismissing Clyne's petition from which Clyne timely appealed. (R., pp.110-114.)

[1] There were actually three transcripts attached to Clyne's motion: (1) 4/5/2013 transcript of the hearing on Clyne's motion for a psychological evaluation at which counsel withdrew the request for the evaluation based on Clyne's statement that he would not participate and Clyne's desire to instead seek Rule 35 relief (R., pp.70-71); (2) 10/26/2012 guilty plea hearing (R., pp.77-81); and (3) 11/30/2012 sentencing hearing (R., pp.82-88).

ISSUES

Clyne states the issues on appeal as:

1. Whether the district court abused its discretion when it denied Mr. Clyne's motion to amend his petition.

2. Whether the district court erroneously summarily dismissed Mr. Clyne's petition for post conviction relief in the face of at least one genuine issue of material fact.

(Appellant's Brief, p.7.)

The state rephrases the issues as:

1. Has Clyne failed to establish the district court abused its discretion in denying his motion to amend?

2. Has Clyne failed to carry his appellate burden of showing error in the summary dismissal of his post-conviction petition?

ARGUMENT

I.
Clyne Has Failed To Show The District Court Abused Its Discretion In Denying His Motion To Amend

A. Introduction

Clyne contends the district court abused its discretion in denying his motion to amend his post-conviction petition. (Appellant's Brief, pp.8-15.) Clyne's claim fails. Application of the correct legal standards to Clyne's motion shows the court reasonably exercised its discretion in denying Clyne's request to amend because amendment would have been futile since one of the proposed claims was already included within Clyne's initial petition and the other two proposed claims lacked merit and, therefore, could not survive summary dismissal.

B. Standard Of Review

Post-conviction cases are generally governed by the Idaho Rules of Civil Procedure, Cole v. State, 135 Idaho 107, 110, 15 P.3d 820 (2000); thus, a motion to amend a post-conviction petition is governed by I.R.C.P. 15(a). Pursuant to I.R.C.P. 15(a), "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The decision to grant or deny a motion to amend is left to the sound discretion of the trial court. Jones v. Watson, 98 Idaho 606, 610, 570 P.2d 284, 288 (1977).

In deciding whether the district court abused its discretion, this Court considers whether the district court (1) perceived the issue as discretionary; (2)

acted within the boundaries of its discretion and consistent with the applicable legal standards; and (3) exercised reason in reaching its decision. State v. Taylor, ___ Idaho, ___, 335 P.3d 31, 39 (2014) (quoting State v. Cantu, 129 Idaho 673, 674, 931 P.2d 1191, 1192 (1997)).

C. The District Court Did Not Abuse Its Discretion In Denying Clyne's Motion To Amend

Although motions to amend should be liberally granted, "[i]f the amended pleading does not set out a valid claim . . . it is not an abuse of discretion for the trial court to deny the motion to file the amended complaint." Taylor v. McNichols, 149 Idaho 826, 847, 243 P.3d 642, 663 (2010) (quoting Black Canyon Racquetball Club, Inc. v. Idaho First National Bank, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991)). In other words, the district court does not abuse its discretion by denying a motion to amend if the amendment would be futile. McCann v. McCann, 138 Idaho 228, 237, 61 P.3d 585, 594 (2002) (citation omitted).

In denying Clyne's motion to amend, the district court reasoned, in relevant part:

> . . . I've looked at the substance of the claims, in terms of futility of the amendment. And I'm going to work backwards here.
>
> I think that the strongest and most important claim to be heard, frankly, is Count III. And that's something that you have a proper venue in post-conviction. That's the ineffective assistance of counsel claim at sentencing, the allegation that [defense counsel] did not argue sentencing appropriately. And that is the claim that I'm most concerned that it be heard and vetted, perhaps by way of an evidentiary hearing, if appropriate.

However, that claim is in Mr. Clyne's initial petition. That claim is already before the Court. So by denying the motion to amend the petition for post-conviction relief, that claim survives for review.

Claim No. 2, the District Court violated due process rights by not ordering a mental health evaluation, that is a claim that would fail on procedural grounds, that it was proper for appeal and should have been raised for direct appeal.

And Claim No. 1, ineffective assistance of counsel in failure to order a mental health evaluation, I think is not a winning claim. But, in addition, it is being raised directly in the appeal from the Court's decision denying the Rule 35 motion. The State Appellate Public Defender has squarely presented to our appellate courts that the Court abused its discretion in insufficiently considering Mr. Clyne's mental health condition in not ordering that.

And I'll just tell you, [counsel], you are always behind when you take a case that wasn't yours. In terms of the mental health information presented to this court in sentencing -- I'm sure you've seen in the PSI -- it was voluminous. And so that was something else that I looked at in reviewing whether to grant this motion.

So I am going to deny the motion to amend. Nevertheless, as I indicated, Mr. Clyne's petition does survive for review. And, on January 30th, I issued a notice of intent to dismiss that petition for the reasons stated in the respondent's October 1st motion for summary dismissal.

So I hope that, [counsel], you and Mr. Clyne can respond to that notice of intent to dismiss and, if proper, give me the reasons why this should be heard at an evidentiary hearing.

(Tr., p.21, L.2 – p.23, L.5.)

Clyne argues that the district court's denial of his motion to amend is "deeply concerning *because the amended petition sought to rectify th[e] shortcomings* in [his] *pro se* petition." (Appellant's Brief, p.10 (italics original).) Clyne did not, however, need to amend his petition in order to avoid summary dismissal of his petition. The district court expressly invited him to respond to the

state's motion and "give [it] the reasons why this should be heard at an evidentiary hearing." (Tr., p.23, Ls.2-5.) Clyne's assertion that "the district court's decision effectively prevented [him] from responding to the stated justifications for summary dismissal" (Appellant's Brief, p.10) is belied by the record and without merit.

Clyne next asserts "the reasons the district court gave for denying the motion to amend the petition were inconsistent with precedent and were not reasonable in light of the justification for summarily dismissing the petition." (Appellant's Brief, p.11.) First, Clyne argues that the court's analysis with respect to Claim 1 of the Amended Petition is "factually wrong" and "ignore[s] precedent that either expressly disallows for such claims to be, or highly recommends that claim not be, addressed in the direct appeal." (Appellant's Brief, p.11.) This argument entirely ignores the first reason the court gave for not allowing an amendment of the petition to include this claim.

Before commenting that the claim was the subject of the direct appeal from the denial of Clyne's Rule 35 motion, the court said: "And Claim No. 1, ineffective assistance of counsel in failure to order a mental health evaluation, I think is not a winning claim." (Tr., p.22, Ls.2-4; see also R., p.108 (court declining to reconsider decision denying motion to amend because "issues Petitioner sought to add were not meritorious").) The court's reference to the appeal was stated "in addition" to its finding that the claim was not "winning." (Tr., p.22, L.5-7.)

Further, Clyne misconstrues the court's comments related to the Rule 35 appeal. The court clarified that the issue "squarely presented" in Clyne's Rule 35 appeal was that "the Court abused its discretion in insufficiently considering Mr. Clyne's mental health condition in not ordering that." (Tr., p.22, Ls.7-11.) Thus, the court's comments in this regard appear to go to the prejudice aspect of the ineffective assistance of counsel claim, not the specific claim itself.

Because Clyne does not challenge the court's finding that the claim was not "winning," *i.e.*, was futile, but instead only complains that the court's evaluation of Claim 1 in the motion to amend was "factually wrong" and contrary to the law that says it is "foolish, if not improper" to raise an ineffective assistance of counsel claim on appeal (Appellant's Brief, pp.11-12), this Court may affirm on the unchallenged basis.[2] 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).

Clyne next asserts that the court abused its discretion in not permitting an amendment of the petition to include his claim that counsel was ineffective "by arguing against [his] interests at the sentencing hearing." (Appellant's Brief, p.13.) Clyne acknowledges that the court declined to allow amendment with this claim because the claim was already pled in the original petition. (Appellant's Brief, p.13 (citing Tr., p.21, Ls.16-20).) Nevertheless, according to Clyne, the

[2] To the extent this Court concludes Clyne has challenged the court's finding that proposed "Count 1" from the amended petition was futile, for the reasons set forth in section II.C.2, the claim was futile because Clyne failed to establish a genuine issue of material fact in relation thereto.

court was still required to permit the amendment because amendment would allow Clyne "to clarify the claim and provide additional factual allegations in support of that claim." (Appellant's Brief, p.13.) This argument again ignores the fact that the court gave him the opportunity to do just that through his response to the state's motion. That Clyne would have preferred to present his clarification and "additional factual allegations" by way of an amended petition as opposed to a response to the state's motion does not mean the court abused its discretion by denying his motion to amend his petition with a claim he already asserted.

Clyne's final complaint, that the court should have allowed amendment because it previously told counsel he could file an amended petition if, after reviewing the case, he found issues that warranted filing an amended petition (Appellant's Brief, p.14), is ultimately irrelevant to the legal analysis governing whether the court abused its discretion in denying his request to amend in order to assert futile or already pled claims. Because Clyne has failed to show error under the applicable legal standards, he has not established any abuse of discretion in the denial of his motion to amend.

II.
Clyne Has Failed To Carry His Appellate Burden Of Showing Error In The Summary Dismissal Of His Post-Conviction Petition

A. Introduction

Clyne claims the district court erred in granting the state's motion for summary dismissal of his petition because, he argues, he "presented a genuine issue of material fact that his trial counsel provided ineffective assistance of counsel by failing to obtain a statutorily-adequate mental health examination and

by arguing against his interests at the sentencing hearing." (Appellant's Brief, p.15.) Clyne's argument fails because his claim that counsel was ineffective for not obtaining a mental health evaluation was not a claim considered pursuant to his initial petition and his claim regarding counsel's performance at sentencing, although alleged in his initial petition, did not raise a genuine issue of material fact warranting an evidentiary hearing.

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

C. Because Clyne Did Not Allege A Genuine Issue Of Material Fact That Would Have Entitled Him To An Evidentiary Hearing, He Has Failed To Show The District Court Erred In Summarily Dismissing His Petition

"Idaho Code § 19-4906 permits a court to rule summarily on applications for post-conviction relief." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) "A court may grant the motion of either party under I.C. § 19-4906(c), or may dismiss the application sua sponte under I.C. § 19-4906(b)." Id. Summary disposition of a post-conviction petition "is appropriate if the applicant's

evidence raises no genuine issue of material fact." Id. at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)). "To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). In order to survive summary dismissal of a claim alleging ineffective assistance of counsel, the petitioner "must establish that: (1) a material issue of fact exists as to whether counsel's performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced the claimant's case." Schoger v. State, 148 Idaho 622, 624, 226 P.3d 1269, 1271 (2010) (citing Strickland v. Washington, 466 U .S. 668, 687-88 (1984)).

Clyne argues that he alleged a genuine issue of material fact with respect to two claims: (1) ineffective assistance of counsel "by arguing against his interests at the sentencing hearing," and (2) ineffective assistance of counsel "by failing to obtain a statutorily-adequate mental health examination." (Appellant's Brief, p.15.) Clyne is incorrect.

1. Clyne Did Not Raise A Genuine Issue Of Material Fact That Counsel Was Ineffective By "Arguing Against Mr. Clyne's Interests At The Sentencing Hearing"

In his petition, Clyne claimed counsel was ineffective at sentencing because he did not argue that four years is excessive in relation to the "seriousness of the crime." (R., p.6.) In his supporting affidavit, Clyne complained that counsel did not "ad[d] rebuttal, and allow for more testimony," or

provide argument regarding the "poor value of the alleged items presumed taken," and the "open vehicle and method of alleged entry." (R., p.9.) In his Objection, Clyne further asserted that counsel did not "offer any appropriate plan for probation" or "treatment."[3] (R., p.103.) These allegations are belied by the record and were otherwise insufficient to create a genuine issue of material fact that counsel was ineffective at sentencing.

With respect to the allegations in Clyne's affidavit regarding the "seriousness" and nature of the crime, defense counsel explicitly argued the nature of Clyne's offense was "de minimis." (R., p.85 (Tr., p.29, Ls.9-12); see also p.85 (Tr., p.30, Ls.12-14 ("we're taking into consideration the magnitude of the offense which is not so great").) Moreover, the district court was well aware of that information at sentencing and, in fact, recognized as much when it imposed sentence. (R., p.88 (Tr., p.41, Ls.18-21 ("And I also don't think that this crime on the scale of things warrants sending you to prison for the maximum

[3] In a footnote, Clyne contends the district court should have considered the "explanations and clarifications of the facts in the record [contained] in the proposed amended petition," and argues those "explanations and clarifications "further demonstrate that there was a genuine issue of material fact." (Appellant's Brief, p.17 n.7.) This assertion lacks merit because, as noted, the court gave Clyne the opportunity to present those "explanations and clarifications" in his response to the state's motion. While Clyne may contend that the district court did not consider the "explanations and clarifications" contained within his Objection since the court understandably construed the Objection as a request for reconsideration (R., pp.107-108), this Court ultimately does not need to decide whether the district court erred in this regard because whether Clyne alleged a genuine issue of material fact sufficient to avoid summary dismissal is subject to free review. Edwards, 111 Idaho at 852, 727 P.2d at 1280.

sentence.").)

As for any additional "testimony" or "rebuttal" Clyne thought was warranted, he never identified what that would be either in his petition, his affidavit, or his Objection. The only added information Clyne has suggested trial counsel should have presented was an "appropriate plan for probation" or "treatment." (Objection, p.103.) The record belies this claim. Defense counsel acknowledged that Clyne historically had difficulty in complying with probation and, for that reason, counsel asked the court to consider commuting Clyne's sentence. (R., p.85 (Tr., p.29, L.8 – p.30, L.1).) Alternatively, counsel asked the court to impose a shorter term of probation than that requested by the state. (R., p.85 (Tr., p.30, Ls.2-3).) In terms of a "plan" for probation, counsel specifically noted that Clyne had "been accepted at Rising Sun Sober Living House." (R., p.85 (Tr., p.29, Ls.7-21).) Clyne himself also provided information to the court regarding his plans to succeed on probation, which included his intent to remain sober, "going to meetings at least once or twice a week," remaining employed, and "look[ing] into a private counselor." (R., p.86 (Tr., p.33, L.21 – p.35, L.10).) Notably, other than claiming that counsel was ineffective for failing to present a "plan," Clyne does not identify any flaws in the "plan" presented to the court at sentencing, much less articulate what "plan" counsel should have offered instead of what was outlined to the court at sentencing. (See generally R., pp.5-10, 103.)

With respect to a "plan" for treatment, counsel noted that Clyne was "not personally looking to be on medication at this point" and Clyne confirmed as

much. (R., p.84 (Tr., p.28, Ls.22-23), pp.85-86 (Tr., p.32, L.6 – p.33, L.12), p.87 (Tr., p.39, Ls.24-25).) It is unclear how counsel could be deficient in failing to present a plan for treatment given Clyne's stated aversion to it.

Clyne's allegations also do not present a genuine issue of material fact with respect to prejudice. On appeal, Clyne contends that had counsel presented a "reasonable plan for probation, with a provision for receiving mental health treatment in the community," "[t]hat, in combination" with the state's recommendation for probation "establishes the reasonable probability that the result (the decision to retain jurisdiction) would have been different." (Appellant's Brief, p.19.) Since Clyne never alleged what that plan would be, there is no basis for his assertion that some unidentified plan would have changed the court's initial sentencing decision.

Because Clyne did not allege a genuine issue of material fact in relation to his claim that counsel's arguments at sentencing were ineffective, he has failed to show the district court erred in summarily dismissing this claim.

2. Clyne Did Not Raise A Genuine Issue Of Material Fact That Counsel Was Ineffective For Failing To Obtain A Mental Health Examination Because He Did Not Allege Such A Claim In His Petition; Even If The Court Considers The Claim, It Does Not Require An Evidentiary Hearing

Clyne next asserts that the court erred in summarily dismissing his claim that trial counsel was ineffective by "failing to seek or secure a psychological evaluation conforming with I.C. §§ 19-2522, -2523, and/or -2524." (Appellant's Brief, p.19.) Clyne cannot establish error in the summary dismissal of a claim he did not allege in the only petition adjudicated by the court – his initial *pro se*

petition. While his claim regarding counsel's failure to seek an adequate mental health evaluation was included as Count 1 in his motion to amend (R., p.64), his request to amend his petition to add that claim was denied as is obvious from the first issue Clyne raises on appeal. This Court should therefore decline to consider Clyne's argument that the claim was improperly dismissed.

Even if the Court considers whether Clyne's would-be Count 1 from his motion to amend alleged a genuine issue of material fact, the record shows the claim would have been properly dismissed without an evidentiary hearing. In Count 1, Clyne alleged counsel was ineffective for failing to "obtain" a mental health evaluation. (R., p.64.) In support of this claim, Clyne contended counsel "was aware that the PSI contained information that [Clyne] suffered from Schizophrenia or other mental illness and had been medicated while in prison, but failed to request an evaluation prepared by a psychologist or psychiatrist in accordance with Idaho law."[4] (R., pp.64-65.) Count 1 does not allege any

[4] Count 1 also includes the allegation that "[c]ounsel failed to present any possible reasonable plan for probation that included mental health" (R., p.65), which was already addressed in the context of Clyne's claim that counsel was ineffective in presenting evidence at sentencing.

prejudice.[5] On this basis alone, Count 1 could not survive summary dismissal. See Schoger, 148 Idaho at 624, 226 P.3d at 1271 (petitioner must establish a material issue of fact on both deficiency and prejudice).

With respect to counsel's alleged deficiency, on appeal Clyne relies on authority relevant to a court's obligation to order a mental health evaluation. (Appellant's Brief, pp.21-22 (citing State v. Durham, 146 Idaho 364, 195 P.3d 723 (Ct. App. 2008).) This authority does not, however, resolve the question of whether counsel is required to pursue a mental health evaluation especially when his client does not want one, as was the case here. While Clyne highlights the fact that everyone agreed the mental health evaluation that was done was flawed (Appellant's Brief, p.20), he ignores his own position regarding submitting to a new evaluation. When asked by the court whether he wanted a new mental health evaluation prior to sentencing, Clyne answered: "No. I feel like my mental health is fine." (R., p.87 (Tr., p.39, Ls.21-25).) Counsel, who

[5] On appeal, Clyne claims counsel alleged prejudice by asserting that "had trial counsel performed reasonably and sought a statutorily-adequate evaluation, he would have recommended a term of probation with an appropriate provision for receiving adequate treatment in the community." (Appellant's Brief, p.23 (citing R., pp.65-66).) The pages of the record upon which Clyne relies for this assertion primarily contain Counts 2 and 3 and, as previously noted, the allegations in Count 1 only relate to counsel's alleged deficiencies. Moreover, the state fails to find any fair reading of Clyne's allegations that would support his assertion that he alleged the claim of prejudice he sets forth on appeal, nor is the relevant question for purposes of prejudice what counsel may have done differently, as Clyne claims, as opposed to what the court would have done differently. See Stevens v. State, 156 Idaho 396, 327 P.3d 372, 385 (Ct. App. 2013) ("To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the proceeding would have been different.").

undoubtedly was aware of Clyne's position in this regard, urged the court to proceed with sentencing without a new evaluation, stating:

> I don't necessarily think we need to set this over for a new mental health evaluation, because you're obligated obviously to take those concerns or factor them in your sentence, but we go back to the IDOC records, and they have him in '06, schizoaffective, '07, schizophrenic, bipolar, 2010 bipolar. So I think we know what we're going to get. We're going to get an evaluation that says he's, you know, schizophrenic, bipolar, somewhere in that spectrum, and needs some medication. He's not interested at this point in taking medication.

(R., p.84 (Tr., p.28, Ls.7-18).)

Regardless of what obligations Idaho statutes imposed upon the court in terms of ordering an evaluation, it was not deficient for trial counsel to do precisely what he did in this case given Clyne's history and his position that he did not want another evaluation. Notably, at a hearing held on a motion for a psychological evaluation counsel filed the same day the court relinquished jurisdiction, counsel indicated that he was withdrawing the request because Clyne said he would "not participate in the psychological evaluation." (R., p.71 (Tr., p.5, Ls.9-14).) Clyne's current arguments are not only undermined by his own actions before the district court, they fail to show he met his burden of showing error in the court's summary dismissal decision.

Because Clyne failed to allege a genuine issue of material fact in support of any of his claims, there is no basis for reversing the district court's order.

CONCLUSION

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

DATED this 17th day of November 2014.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of November, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

JESSICA M. LORELLO
Deputy Attorney General