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Gonzalez v. State Appellant's Brief Dckt. 42463

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOSE MANUEL GONZALEZ,)	
)	NO. 42463
Petitioner-Appellant,)	
)	JEROME COUNTY NO. CV 2014-59
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

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

HONORABLE JOHN K. BUTLER
District Judge

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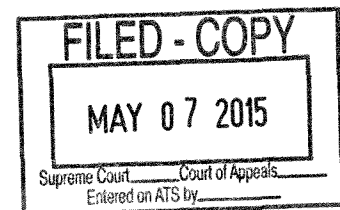


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STATEMENT OF THE CASE

Nature of the Case

Jose Gonzalez filed a petition for post-conviction relief asserting, in part, that his guilty plea was involuntary as a result of his trial counsel's threat of violence if he did not accept the State's plea offer. Mr. Gonzalez asserts that the district court erred in granting the State's motion for summary dismissal of this issue, because there was a genuine issue of material fact as to whether his guilty plea was an involuntary product of his trial counsel's coercion.

Statement of the Facts and Course of Proceedings

Pursuant to an agreement with the State, Jose Gonzalez pled guilty to aggravated assault and misdemeanor malicious injury to property, and was sentenced to a total unified term of five years, with one year fixed. (R., pp.5-6; see *also* Exhibits (Transcripts of Entry of Plea hearing and Sentencing hearing).) Mr. Gonzalez filed a timely petition for post-conviction relief and accompanying documentation, and the district court granted his request for appointed counsel. (R., pp.5-71.) The district court also granted Mr. Gonzalez's request to file an amended petition. (R., pp.93-108.)

In his amended petition, Mr. Gonzalez made the following claims,

7. Stacey Gosnell, now known as Stacey DePew ("Depew") represented Petitioner at all material times herein in his Underlying Criminal Case.

8. Through the course of Depew's representation of Petitioner, Petitioner informed Depew on several occasions that he wanted a trial in the manner (sic) so as to cross-examine his accusers, to produce evidence as to what happened during his alleged criminal acts, and to assert potential defenses as to Petitioner's state of mind or involuntary intoxication during all relevant times during his alleged criminal acts.

9. On November 26, 2013, Petitioner met with Depew in the Jerome County Court Annex. Petitioner was held in the holding cells behind the courtrooms, and Depew came back and visited with Petitioner at that location.

10. During their meeting, Depew spoke with Petitioner out loud and in the presence of other inmates, including, but not limited to Nathan Guymon.¹

11. During their conversation and meeting, Depew represented to Petitioner that if he were to take the plea deal offered by the prosecutor of one (1) year fixed with four (4) indeterminate, that he would be guaranteed parole after one (1) year.

12. During their meeting, Petitioner once again told Depew that he wanted to go to trial so as to cross-examine his accusers, to produce evidence as to what happened during his alleged criminal acts, and to assert potential defenses as to Petitioner's state of mind or involuntary intoxication during all relevant times during his alleged criminal acts.

13. Depew then told Petitioner, in words or substance, that if he did not take the deal offered by the prosecutor, that she would strangle him.

14. Following Depew's statements Petitioner was both afraid of Depew in her threats, but he also lacked all confidence in Depew as his attorney to advocate for him at trial, and as such wholeheartedly believed that his only option in his case was to plea[d] guilty.

15. Following Petitioner's conversation with Depew, Petitioner went in front of the District Court and entered a plea of guilty to Aggravated Assault, I. C. § 18-905 and Malicious Injury to Property, I.C. § 18-7001 in accordance with a plea agreement.

16. Petitioner did not bring up the threat of violence from Depew or his complete lack of confidence in Depew's representation to the District Court, as he believed that he had no further options in the matter and because he was afraid of his attorney.

¹ Mr. Gonzalez attached an affidavit from Mr. Guymon to his initial *pro se* petition, in which Mr. Guymon swore that on the day Mr. Gonzalez entered his guilty plea, he witnessed trial counsel tell Mr. Gonzalez, "After all of this, if you change your mind and back out on me now by not taking this deal, I'm going to come through those bars and strangle you." (R., pp.36-37.)

17. Petitioner believes that his guilty plea was not voluntary or intelligent given the facts contained herein.

18. Had Depew not threatened Petitioner, he would not have accepted the plea agreement with the State of Idaho and would not have entered a guilty plea in this matter.

19. Also, Depew misinformed Petitioner of the consequences of the plea deal, which Petitioner did not fully understand, specifically in relation to parole in the State of Idaho. As such, Petitioner's entering of a guilty plea was not intelligent.

20. Petitioner seeks recourse in this matter in asking for his allowance to withdraw his guilty plea and further pursue trial in the charges in his Underlying Criminal Case.

(R., pp.104-106.)

The State filed an answer and a motion for summary dismissal. (R., pp.114-118, 144-164.) The State asserted that, even assuming that trial counsel made the threat alleged by Mr. Gonzalez, the record demonstrates that Mr. Gonzalez's plea was not a product of that threat, and was therefore not coerced. (R., pp.145-158.) The State asserted that it was not reasonable for Mr. Gonzalez to believe that his trial counsel could actually carry out the threat, considering it was witnessed by a guard and at least one other inmate, and bars separated the two when the threat was made. (R., p.147.) The State further asserted that Mr. Gonzalez's statements during the entry of plea hearing, his recitation of what happened contained in the PSI, and his statements during the sentencing hearing, all indicate that Mr. Gonzalez entered his guilty plea voluntarily, and that he was satisfied with trial counsel. (R., pp.147-158.) As to Mr. Gonzalez's claim that his plea was not intelligent due to trial counsel telling him that he was guaranteed to be paroled after one year, the State asserted that this claim contradicts Mr. Gonzalez's claim that he was coerced into entering his guilty plea by trial counsel's

threat, and further asserted that the claim is not supported by any evidence. (R., pp.158-160.)

Mr. Gonzalez filed a written reply to the State's motion for summary dismissal and "Petitioner's Statement of Undisputed Facts, Omitted Material Facts, and Genuine Issues of Material Fact." (R., pp.171-180, 183-188.) Mr. Gonzalez asserted that the remaining genuine issues of material fact were, "What affect Ms. Depew's threatening statement and conduct in Petitioner's case had on Petitioner while he went forward to the change of plea hearing on November 26, 2012?" and "Whether Ms. Depew was ineffective as Petitioner's counsel when she told Petitioner that he was guaranteed parole after one year of incarceration?" (R., p.187.) The State filed a reply to Mr. Gonzalez's reply arguing that he did make any assertions regarding the prejudice prong of his claim that trial counsel told him he would be paroled after one year. (R., pp.189-193.)

During a hearing on the State's summary dismissal motion, counsel for Mr. Gonzalez asserted that the court should infer that he was under continuing duress from his trial counsel's threat, "and that's something we would like to parse out in an evidentiary hearing." (Tr., p.4, L.15 – p.5, L.6.) Counsel for Mr. Gonzalez further asserted,

[A]ssuming the facts are in favor of my client, it would be this, that on the 26th he was back behind in the holding cells. Ms. DePew went back there at that time.

Through (sic) numerous times he had asked Ms. DePew to call certain witnesses and the like, and for whatever reason Mr. Gonzalez was not satisfied with her.

At that time he says, "Hey, I want to go to trial." Ms. DePew says, "Well, if you don't take the deal, I'm going to reach through and strangle you." However that was characterized.

He then, in his mind, as part of his petition, he says, "Well, I don't trust this person anymore. She's now threatened me. I not only distrust her, but I'm scared of her.["]

He comes in and goes, well, at least in – at least the worse that can happen to me is we go in and the state's going to be recommending something that will, in the event the judge accepts it, will allow me – I'll be on parole in a year. And that's if, of course, the evidentiary hearing and everything went my client's way.

I'm not in his head. I've had an opportunity to sit down and meet with Mr. Gonzalez on multiple times, but that's essentially what I've gotten from him. I'm sitting next to somebody I don't trust. They're supposed to be my attorney. I'm scared of them and – but I know all I've got to lose here is this if I go forward. And so I do believe there's enough facts, and that's what we to essentially (sic) to parse out at an evidentiary hearing.

(Tr., p.7, L.1 p 8, L.7.) The court took the matter under advisement. (Tr., p.8, Ls.15-17.)

The district court entered a Memorandum Decision RE: Motion for Summary Dismissal granting the State's motion. (R., pp.200-218.) The court took judicial notice of the Register of Actions, the transcripts of the change of plea and sentencing hearings, the PSI and attached documents,² and Mr. Gonzalez's Rule 35 motion and attached documents. (R., p.202.) The court found that the transcript of Mr. Gonzalez's entry of plea showed that the plea was entered consistently with the requirements of Idaho Criminal Rule 11; thus, there was *prima facie* evidence that the plea was voluntary and knowing. (R., pp.205-209.) The court continued,

² Mr. Gonzalez has filed a motion to augment the record with a copy of his Pre-Sentence Investigation Report and attached documents. The motion to augment is currently pending.

In this case, despite taking the facts alleged in the petition as true, under the totality of the circumstances Petitioner's plea was not coerced though the threat was directed at the Petitioner and his plea. In addition to the Rule 11(c) prima facie evidence of voluntariness discussed supra, Petitioner's contention that the plea was a product of trial counsel's coercion is further undermined by his own prior filings and surrounding circumstances which are: (1) inconsistent with the alleged coercion, (2) show an absence of well-grounded fear for his own safety, and (3) reflect ample time and opportunity to escape the supposed danger.

(R., p.211.) After analyzing the record, the court found,

Therefore, taking the Petitioner's allegations as fact, the Petitioner is not entitled to withdraw his guilty plea based on coercion since an innocent person would not have felt compelled to plead guilty in light of the totality of the circumstances. Petitioner's claim is without merit because: (1) the Petitioner's guilty plea was taken in accordance with I.C.R. 11(c) raising the presumption that it was knowing and voluntary; (2) Petitioner's statement regarding when trial counsel threatened him is inconsistent with court records; (3) Petitioner's contention that he was afraid of DePew following the threat is not objectively supported by the record as he had multiple opportunities before and after entering his plea to bring such sincerely held fear to the attention of the Court; and (4) Petitioner had opportunity, even assuming he was afraid of DePew, to evade the alleged harm threatened since the coercive statement occurred while DePew and Petitioner were physically separated. Therefore, because Gonzalez's allegations in his Petition are disproved by evidence (and the lack thereof) in the record he is not entitled to post-conviction relief or withdrawal his guilty plea based on coercion by trial counsel.

(R., pp.211-214.) Regarding Mr. Gonzalez's claim that trial counsel guaranteed parole after one year rendering his plea invalid, the court found that any alleged mistaken characterization of the time Mr. Gonzalez would have to serve in prison did not affect the voluntariness of the plea.³ (R., pp.241-217.)

Mr. Gonzalez timely appealed from the district court's Judgment summarily dismissing his post-conviction petition. (R., pp.219-220, 223-226.)

³ Mr. Gonzalez does not the summary dismissal of this claim in this appeal.

ISSUE

Did the district court err in granting the State's motion for summary dismissal of Mr. Gonzalez's claim that his guilty plea was involuntary, because there exists a genuine issue of material fact as to whether his guilty plea was a product of his counsel's coercion?

ARGUMENT

The District Court Err In Granting The State's Motion For Summary Dismissal Of Mr. Gonzalez's Claim That His Guilty Plea Was Involuntary, Because There Exists A Genuine Issue Of Material Fact As To Whether His Guilty Plea Was A Product Of His Counsel's Coercion

A. Introduction

Mr. Gonzalez claimed that, after his trial counsel threatened to strangle him if he did not accept the State's plea offer, he was both afraid of his trial counsel and he lacked confidence in her. While the district court addressed Mr. Gonzalez's claim of fear in granting the State's motion for summary dismissal, the court failed to address Mr. Gonzalez's claim that he lacked confidence in his trial counsel, and how that lack of confidence affected the voluntariness of his guilty plea. Because there exists a genuine issue of material fact as to whether Mr. Gonzalez's guilty plea was coerced by trial counsel's conduct, the district court erred in summarily dismissing this claim.

B. Standards Of Review

A post-conviction petition initiates a proceeding that is civil in nature, and like a plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). However, unlike a plaintiff in other civil cases, the original post-conviction petition must allege more than merely "a short and plain statement of the claim." *Id.* at 443-444. The application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.* In addition, the post-conviction

petition must set forth with specificity the legal grounds upon which the application is based. *Ridgley v. State*, 148 Idaho 671, 675 (2010).

A claim of ineffective assistance of counsel may properly be brought through post-conviction proceedings. *Thomas v. State*, 185 P.3d 921 (Ct. App. 2008). To prevail on a claim of ineffective assistance of counsel, a petitioner must first show that trial counsel's performance was constitutionally deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Aragon v. State*, 114 Idaho 758, 760 (1988). Where a defendant shows that his counsel was deficient, prejudice is shown if there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, at 694; *Aragon* at 760.

A district court may summarily dismiss a post-conviction petition only where the petition and evidence supporting the petition fail to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. "A material fact has 'some logical connection with the consequential facts[,] *Black's Law Dictionary*, 991 (7th Ed.1999), and therefore is determined by its relationship to the legal theories presented by the parties." *Id.* On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the appellate court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896 (Ct. App. 1993). "[W]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences."

Yakovac, 145 Idaho at 444 (quoting *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519 (1982).) Furthermore,

“When an action is to be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts.”

Id. (quoting *Loomis v. City of Hailey*, 119 Idaho 434, 437 (1991).)

The United States Supreme Court has defined the standard for whether there exists a genuine issue of material fact as whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved in favor of either party.” *Id.* at 250. If a genuine factual issue is presented, an evidentiary hearing must be conducted. *Yakovac*, 145 Idaho at 444. The underlying facts alleged by the petitioner “must be regarded as true” for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009).

C. The District Court Erred In Granting The State’s Motion For Summary Dismissal Of Mr. Gonzalez’s Claim That His Guilty Plea Was Involuntary, Because There Exists A Genuine Issue Of Material Fact As To Whether His Guilty Plea Was A Product Of Trial Counsel’s Coercion

In his amended petition, Mr. Gonzalez asserted that he was both afraid of his attorney and lost confidence in her, as a result of her threat to strangle him if he did not agree to accept the State’s plea offer. (R., pp.104-105.) Specifically, he stated that

“[f]ollowing Depew’s statements Petitioner was both afraid of Depew in her threats, **but he also lacked all confidence in Depew as his attorney to advocate for him at trial, and as such wholeheartedly believed that his only option in his case was to plea guilty.**” (R., p.105 (emphasis added).) Thus, Mr. Gonzalez asserted that his guilty plea was involuntary. (R., pp.104-105.)

The Idaho Supreme Court has described the test for determining whether or not a guilty plea is voluntary as follows:

Whether a plea is voluntary and understood entails inquiry into three areas: (1) **whether the defendant’s plea was voluntary in the sense that he understood the nature of the charges and was not coerced;** (2) whether the defendant knowingly and intelligently waived his rights to a jury trial, to confront his accusers, and to refrain from incriminating himself; and (3) whether the defendant understood the consequences of pleading guilty. **It is clear that the voluntariness of a guilty plea can be determined by considering all of the relevant surrounding circumstances contained in the record.**

State v. Colyer, 98 Idaho 32, 34 (1976) (citation omitted) (emphasis added). The Idaho Court of Appeals has observed, “[a] plea of guilty is deemed coerced only where it is improperly induced by **ignorance, fear or fraud.**” *State v. Spry*, 127 Idaho 107, 110 (Ct. App. 1995) (citing *Lockard v. State*, 92 Idaho 813 (1969); *Mata v. State*, 124 Idaho 588 (Ct. App. 1993) (emphasis added)). “If an innocent person would have felt compelled to plead guilty in light of the circumstances, it can properly be said that the plea was involuntary.” *Spry*, 127 Idaho at 110-111 (citing *Mata, supra.*).

The parties stipulated that trial counsel threatened Mr. Gonzalez with physical violence if he did not take accept the State’s plea offer, and stipulated that Mr. Gonzalez was both afraid of his trial counsel and that he lacked confidence in her. (R., pp.165, 183-184.) The district court found that Mr. Gonzalez’s fear of his trial counsel did not

result in his guilty plea for multiple reasons; however, the court failed to analyze how Mr. Gonzalez's lack of confidence in his trial counsel played into the voluntariness of his plea. (See *generally* R., pp.200-218 (Memorandum Decision RE: Motion for Summary Dismissal).) Mr. Gonzalez asserts that an innocent person who desires to take their case to trial and has expressed this desire to their counsel, would nonetheless plead guilty if that innocent person was both afraid of and lacked confidence in their trial counsel, upon counsel threatening that innocent person with violence if they did not accept a plea agreement.

While the district court correctly recognized that there is a rebuttable presumption that guilty pleas entered consistently with the requirements of I.C.R. 11(c) are voluntary and knowing (see R., pp.206-207 (citing *Ray v. State*, 133 Idaho 96, 99 (1999)), a factual stipulation that Mr. Gonzalez was both afraid of and lost confidence in his trial counsel due to trial counsel's threat of physical violence (see R., pp.165, 183-184), surely overcomes that presumption. As such, Mr. Gonzalez asserts that there is a genuine issue of material fact as to whether or not his guilty plea was voluntary. Therefore, the district court erred in summarily dismissing this claim.

CONCLUSION

Mr. Gonzalez respectfully requests that this Court vacate the district court's Judgment summarily dismissing his claim that his guilty plea was involuntary, and remand his case to the district court for an evidentiary hearing on that issue.

DATED this 7th day of May, 2015.

A handwritten signature in black ink, appearing to read "Jason C. Pintler", written over a horizontal line.

JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of May, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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