1-25-2016

Cornelison v. State Respondent's Brief Dckt. 42996

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARK WAYNE CORNELISON,	)	
	)	**No. 42996**
Petitioner-Appellant,	)	
	)	**Twin Falls Co. Case No.**
v.	)	**CV-2014-2093**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-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 TWIN FALLS

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STATEMENT OF THE CASE

Nature Of The Case

Mark Wayne Cornelison appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

Cornelison pled guilty to felony DUI with a persistent violator enhancement. (R., p. 171.) The district court sentenced him to 20 years with 10 years determinate. (R., pp. 191-94.) He initiated the current action by filing a petition for post-conviction relief. (R., pp. 5-8.) In his petition, Cornelison asserted a claim of ineffective assistance of counsel for failing to file a motion to suppress evidence of a blood draw. (R., p. 7.) In his affidavit, Cornelison included allegations that counsel was ineffective for failing to adequately argue mental health at sentencing. (R., pp. 15-16.)

The state filed an answer and a motion to dismiss. (R., pp. 60-67, 90-91.) The district court granted the motion to dismiss, rejecting the claim of ineffective assistance of counsel for failing to file a motion to suppress evidence gathered as a result of a blood draw "because Cornelison cannot show that such a motion, if filed, would have succeeded." (R., pp. 270-77.) The district court also addressed, and dismissed, the "claim" of ineffective assistance of counsel at sentencing. (R., pp. 277-79.) Cornelison appealed from the district court's judgment dismissing the case. (R., pp. 281, 287.)

ISSUES

Cornelison states the issues on appeal as:

1. District court erred in it's interpretation of Line 6 of the parole agreement, and by not reading the parole agreement in its entirety, or as a whole.

2. District court erred in it's interpretation of facts in, State v. Ellis, and failed to recognize that higher courts find parolee's do maintain some Federal Constitutional rights.

3. District court failed to recognize Parolee's ability to withdraw consent to the Parole Agreement, as stated in Cornelison's 4 page, hand written brief, dated the 16th day of January, and marked received by court January 22. [Exhibit #4.]

4. District court failed to recognize, and still fails to recognize the date that Suzannes Cooper's mental health report was filed with court. [Exhibit #5.] Therefore, District court failed to adequately rule on Cornelison's mental health claim.

(Appellant's brief, p. 8 (some capitalization altered, otherwise verbatim).)

The state rephrases the issues as:

1. Has Cornelison failed to show that the district court erred by concluding counsel was not ineffective for electing to not file a motion to suppress evidence because such a motion would not have been granted?

2. Has Cornelison failed to show that the district court erred by concluding counsel was not ineffective in relation to sentencing?

ARGUMENT

I.
Cornelison Has Failed To Show That The District Court Erred By Concluding Counsel Was Not Ineffective For Electing To Not File A Motion To Suppress Evidence Because Such A Motion Would Not Have Been Granted

A. Introduction

The district court concluded that Cornelison failed to establish a *prima facie* claim of ineffective assistance of counsel for failing to file a motion to suppress evidence of his blood draw because such a motion would not have been granted. (R., p. 270.) Specifically, such a motion would have failed because "Cornelison was out on parole at the time of the search in question, and it is clear from the record that he waived his Fourth Amendment rights in his parole agreement." (R., pp. 275-76.) Application of the relevant legal standards shows the district court's analysis was correct.

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).

C. Cornelison Failed To Show Ineffective Assistance Of Counsel Because Any Motion To Suppress Would Necessarily Have Failed

To avoid summary dismissal, a post-conviction petitioner must present admissible evidence making out a *prima facie* case as to each essential element

of the claims upon which the petitioner bears the burden of proof. Adams v. State, 158 Idaho 530, 537, 348 P.3d 145, 152 (2015); DeRushé v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009); Arellano v. State, 158 Idaho 708, 710, 351 P.3d 636, 638 (Ct. App. 2015); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994). The elements of an ineffective assistance of counsel claim are deficient performance and prejudice. Strickland v. Washington, 466 U.S. 668, 687 (1984). Where a post-conviction petitioner alleges trial counsel was ineffective for failing to file a motion, "a conclusion that the motion, if pursued, would not have been granted by the trial court is generally determinative of both prongs of the *Strickland* test." Wolf v. State, 152 Idaho 64, 67-68, 266 P.3d 1169, 1172-73 (Ct. App. 2011). Here the district court concluded that, if pursued, a motion to suppress evidence of the blood draw would not have been granted. (R., pp. 270-76.) Application of relevant Fourth Amendment legal standards supports the district court's ruling.

"A person challenging a search has the burden of showing he or she had a legitimate expectation of privacy in the item or place to be searched." State v. Pruss, 145 Idaho 623, 626, 181 P.3d 1231, 1234 (2008). To meet this burden the moving party must demonstrate both "a subjective expectation of privacy in the object of the challenged search" and that "society [is] willing to recognize that expectation as reasonable." Id.

Parolees and probationers enjoy a reduced expectation of privacy against governmental intrusion. Samson v. California, 547 U.S. 843 (2006); United States v. Knights, 534 U.S. 112 (2001). "[P]ersons conditionally released to

societies have a reduced expectation of privacy, thereby rendering intrusions by government authorities 'reasonable' which otherwise would be unreasonable or invalid under traditional constitutional concepts." State v. Gawron, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987). Thus, "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." Samson, 547 U.S. at 856.

Here it was "undisputed that Cornelison was out on parole at the time of the search in question, and it is clear from the record that he waived his Fourth Amendment rights in his parole agreement." (R., p. 275.) Condition 6 of his parole agreement "required Cornelison to 'freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using, or under the influence of alcohol or narcotics ….'" (R., p. 276.) "Such waiver included 'medical and chemical tests and examinations for the purpose of determining if parolee is using, or under the influence of alcohol,' which is exactly what occurred with the blood draw in question." (Id.) The district court did not err in concluding that the motion to suppress would not have been granted, and therefore Cornelison did not support a *prima facie* claim of either deficient performance or prejudice.

II.
Cornelison Failed To Show That The District Court Erred By Concluding Counsel Was Not Ineffective In Relation To Sentencing

A. Introduction

Cornelison alleged that, although the court at sentencing had the reports of two psychologists, it lacked the report of Susanne Cooper, a clinical social

worker. (R., p. 15.) He claimed his attorney was ineffective for failing to seek a continuance to present Cooper's report (and that it had to be presented by a Rule 35 motion) and failing to "say anything about [his] mental health issues" at sentencing. (R., pp. 15-16.) The district court found these claims disproved by the record in the criminal case, because Cooper's report was in fact before the sentencing court and in denying the Rule 35 motion the sentencing judge stated that mental health did not play a significant role because the sentence was required to protect the community. (R., pp. 277-79.) Review shows the district court was correct.

B. Standard Of Review

In reviewing the summary dismissal of a post-conviction application, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in petitioner's favor, would require relief to be granted. Nellsch v. State, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992). The Court freely reviews the district court's application of the law. Id. at 434, 835 P.2d at 669. However, the Court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001).

C. The District Court Correctly Concluded That The Record Disproved Cornelison's Allegations Of Ineffective Assistance Of Counsel At Sentencing

"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)). Thus, a claim for post-conviction relief is subject to summary dismissal "if the applicant's evidence raises no genuine issue of material fact" as to each element of the petitioner's claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. "Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law." Workman, 144 Idaho at 522, 164 P.3d at 802.

In order to establish a prima facie claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). When a defendant claims his counsel was ineffective for failing to file a motion, "the district court may consider the probability of success of the motion in question in determining whether the attorney's inactivity constituted incompetent performance." Wolf v. State, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011) (citing Boman v. State, 129 Idaho 520, 526, 927 P.2d 910, 916 (Ct.

App.1996)). "Where the alleged deficiency is counsel's failure to file a motion, a conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the *Strickland* test." Id. at 67-68, 266 P.3d at 1172-73.

The record supports the district court's conclusion that Cornelison's claim that counsel was ineffective for not moving for a continuance so that Cooper's report could be submitted was disproved by the record. The district court in the criminal case specifically found that Cooper's report had been submitted on November 21, 2013, four days before sentencing. (R., pp. 232-33; see also #41715 Confidential Exhibits, pp. 75-89.[1]) The record of the criminal case disproved Cornelison's claim.[2]

Likewise, Cornelison's claim that counsel's argument was ineffective is disproven by the record. The mental health evidence was before the district court, which considered it, but ultimately imposed the sentence it did to protect the community. In denying the Rule 35 motion, the district court stated that "the

[1] The appeal in the criminal case is Docket No. 41715. The district court took judicial notice of the PSI in that case, although no copy of the PSI was introduced in the record in this case. (R., pp. 118, 256, 278.)

[2] Cornelison attempts to rebut the district court's finding, made in the criminal case, that it had the PSI addendum at the time of sentencing, by attaching a copy of the addendum to his brief. (Appellant's brief, p. 43.) Even if the procedural bars to presenting new evidence to the appellate court were ignored, review of the document attached to the brief shows that the "received" stamp is by the Department of Correction. That the Department of Correction stamped a copy of the addendum as received on November 25 does not rebut the district court's finding that the document was received by the court on November 21. (See #41715 Confidential Exhibits, p. 75 (showing a court clerk received stamp of November 21, 2013).)

Defendant's mental health status was but one of many factors considered by the Court in determining the proper sentence in this case" and that the court "concluded that the Defendant presents a substantial risk to the Twin Falls community." (R., p. 234 (denial of Rule 35 motion).) Because the district court in the criminal case specifically found it had considered the mental health evidence presented and concluded that Cornelison was a substantial risk to the community based on his horrible record of drinking and driving, the district court in the post-conviction case rightly concluded that Cornelison's claim of ineffective assistance of counsel in failing to argue mental health more in sentencing was disproven by the record.

CONCLUSION

The state respectfully requests this Court to affirm the summary dismissal of Cornelison's petition for post-conviction relief.

DATED this 25th day of January, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 25th day of January, 2016, caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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/s/ Kenneth K. Jorgensen
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KKJ/dd