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Ridgley v. State Respondent's Brief Dckt. 35823

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

LEE A. RIDGLEY,
Petitioner-Appellant,

NO. 33782

vs.

STATE OF IDAHO,
Respondent.

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DEC 26 2007
Supreme Court Court of Appeals
Entered on AFS by:

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BOUNDARY**

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District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Lee A. Ridgley appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Course Of The Underlying Criminal Proceedings (#29320)

Ridgley was charged with lewd and lascivious conduct after having oral/genital and manual/genital contact with his 12 year-old stepdaughter. (#29320 R., pp.27-28). Ridgley pled guilty to the lewd and lascivious charge in exchange for the dismissal of another pending case against him. (#29320 R., pp.23, 26; 2/26/02 Tr., p.2, Ls.1-4.)

Several months later, Ridgley hired a new attorney and moved to withdraw his plea. (#29320 R., pp.33-36.) In support of his motion Ridgley claimed 1) "although he had requested information from Roger Williams [his previous attorney], he [Ridgley] has never seen a copy of the police report and is not sure as to what the factual allegations are against him;" 2) he did not have enough time with his attorney to "consult . . . about the rights he would be giving up, as well as, request to see any of the physical documentation offered by the State;" 3) that he did not have "the benefit of counsel to visit with him about the alternatives that he may have so that he can make a free, voluntary, and knowing decision;" and 4) "it was represented to [Ridgley] by his counsel, Roger Williams, that the likely sentence in this case would be four (4) months in jail and then he would be placed on probation" and that he did not understand that "the Court

could impose a life sentence" (#29320 R., pp.34-35.) Significantly, Ridgley did not assert that he was mentally or psychologically incapable of entering into the plea as a basis for withdrawing his plea.

After holding an evidentiary hearing at which Roger Williams testified, the district court denied Ridgley's motion. (#29320 R., pp.45-48.) In denying the motion the court made a number of factual findings:

- 1) Ridgley "was informed that the potential maximum penalty was life imprisonment."
- 2) Ridgley "expressed no confusion and sought no clarification about the charges or his rights during the plea hearing."
- 3) Ridgley "admitted the allegations against him" and "waived the right to have an information filed against him."
- 4) Ridgley's attorney, Roger Williams, "spent time with [Ridgley] prior to the preliminary hearing and discussed the charges with him."
- 5) Ridgley admitted to the judge taking the plea that his attorney had "discussed the matter thoroughly" with him.
- 6) "That in obtaining the plea bargain, Mr. Williams was following his client's wishes" and that "[u]nder the circumstances of this case, there was no requirement to engage in discovery once [Ridgley] informed his counsel of his desire to plead guilty" because of Ridgley's initial desire to plead guilty.

(#29320, R., p.47.) The district court later sentenced Ridgley to a unified life sentence with ten years fixed. (#29320, R., p.78.)

Ridgley appealed the denial of his motion to withdraw his plea and his sentence. (#29320, R., pp.81-83.) The Idaho Court of Appeals affirmed. State v. Ridgley, Docket No. 29320, 2004 Unpublished Opinion No. 430 (Idaho Ct. App. April 6, 2004).

Course Of Post-Conviction Proceedings

On April 4, 2005, Ridgley filed a petition for post-conviction relief claiming ineffective assistance of counsel. (R., pp.3-7.) In his petition, Ridgley asserted essentially the same arguments and relied on the same facts as contained in his motion to withdraw his guilty plea. Ridgley asserts his counsel: 1) "spent less than one (1) hour with [him] before he entered his guilty plea;" 2) did not contact any of the witnesses or review the audiotapes and videotapes in the case; 3) "did not listen to [his] pleas that [he, Ridgley] was not understanding [his attorney's comments]" and failed to listen to Ridgley's complaints that Ridgley "did not understand the proceedings and the implications of what was transpiring both in the criminal case"; 4) "would not visit" him so Ridgley could discuss the "potential defense that [Ridgley] would have" in his case; 5) "failed to advise [Ridgley] of the potential of having an evaluation to determine [Ridgley's] mental status, [and] whether or not [Ridgley] would appreciate the proceedings that were filed against [him]"; and 6) did not recognize Ridgley's "state of shock and disbelief" which led to his involuntary signing of his plea and verbalized waiver of rights. (R., pp.4-5.)

The state filed an answer and moved for summary dismissal. (R., pp.14-21.) The district court considered the motion for summary dismissal and filed a notice of intent to dismiss on the grounds that Ridgley's petition did not contain a factual basis sufficient to establish a claim for ineffective assistance of counsel. (R., pp.105-110.)

Ridgley responded to the notice of intent to dismiss with affidavits from himself and his second counsel -- Mr. Hull. (R., pp.23-25.) The district court

concluded, however, that Ridgley's response did not rectify the deficiencies identified in the notice of intent to dismiss and, consequently, summarily dismissed Ridgley's petition for post-conviction relief. (R., pp.152-61.) Ridgley appeals that dismissal. (R., pp.165-66.)

ISSUES

Ridgley states the issues on appeal as:

1. Did the district court err by summarily dismissing Mr. Ridgley's petition for post-conviction relief because he raised a genuine issue of material fact as to whether his attorney was ineffective?
2. Did the district court err by dismissing on grounds not set forth in the notice to dismiss?

(Appellant's Brief, p.6.)

The state rephrases the issues on appeal as:

1. Did the district court properly dismiss Ridgley's petition where the district court recognized there was no factual basis for Ridgley's claims because of the district court's factual findings regarding Ridgley's motion to withdraw his plea and where Ridgley's claims were barred by res judicata?

2. Did Ridgley receive sufficient notice of his petition's deficiencies where the district court's notice of its intent to dismiss informed Ridgley that the factual basis for his deficient performance claim was affirmatively disproved by the record and that he had not met his burden of submitting facts showing that he was prejudiced?

ARGUMENT

I.

The District Court Properly Dismissed Ridgley's Petition Because Ridgely Failed To Meet His Burden Of Establishing A Factual Basis For His Claim Of Ineffective Assistance Of Counsel

A. Introduction

Ridgley argues the district court erred in summarily dismissing his petition claiming his petition created a genuine issue of material fact as to whether his attorney rendered ineffective assistance of counsel. (Appellant's Brief, pp.7-15.) This argument has no merit. Ridgley's petition and supporting affidavits either rely on facts that have been affirmatively disproved by the record or make conclusory claims that do not have any factual basis. Consequently, Ridgley has not met his burden of showing a genuine issue of material fact and the district court's summary dismissal of Ridgley's petition was appropriate.

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. The question of whether an action is barred by res judicata is a question of law over which the appellate courts exercise free review. State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000).

C. Ridgley's Petition And Affidavits Do Not Create A Genuine Issue Of Material Fact

Ridgley contends his petition and submitted affidavits are sufficient to create a genuine issue of material fact on the issue of whether he received ineffective assistance of counsel. In Strickland v. Washington, the Supreme Court set forth a two-prong test that a defendant must satisfy in order to be entitled to relief on a claim of ineffective assistance of counsel. 466 U.S. 668, 687-88 (1984). Per Strickland, a defendant must demonstrate both that his counsel's performance fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Id.; see also Aragon v. State, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); Russell v. State, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990).

Ridgley's post-conviction ineffective assistance of counsel claims can be divided into two categories: Ridgley's claims that his counsel: 1) did not spend sufficient time with him to discuss the particulars of his case and failed to investigate and review evidence, and 2) should have been aware of his mental status and inability to understand the proceedings and, therefore, should have discussed the possibility of a psychological evaluation with Ridgley. (R., pp.4-5.) The first category of claims is barred by res judicata. Moreover, they are claims without factual basis because the facts upon which Ridgley relies are facts that have been affirmatively disproved by the record. Ridgley's second category of claims are based on conclusory statements without factual basis and, therefore, do not create a genuine issue of material fact.

1. Ridgley's Claims That His Attorney Failed To Meet With Him To Discuss Possible Defenses And Failed To Review Evidence Are Claims Barred By The Doctrine Of Res Judicata

The doctrine of res judicata prevents re-litigation of issues that have been previously decided in a final judgment or decision in an action between the same litigants. Rhoades, 134 Idaho at 863, 11 P.3d at 482; Gubler v. Brydon, 125 Idaho 107, 110, 867 P.2d 981, 984 (1994) (res judicata "prevents the litigation of causes of action which were finally decided in a previous suit"). Thus, "when legal issues are decided in a criminal action on direct appeal, the defendant is barred by the doctrine of res judicata from raising them again in a post-conviction relief proceeding." State v. Creech, 132 Idaho 1, 10, 966 P.2d 1, 10 (1998) (citing State v. Beam, 115 Idaho 208, 210, 766 P.2d 678, 680 (1988); State v. Fetterly, 115 Idaho 231, 233, 766 P.2d 701, 703 (1988)).

Ridgley claims his counsel was ineffective because he did not spend sufficient time with him, failed discuss defenses with him, and failed to investigate or review evidence. (R., pp.4-5.) These are claims that have already been presented (#29329, R., p.334-35), rejected (#29329, R., p.78), and affirmed on direct appeal (State v. Ridgley, Docket No. 29320, 2004 Unpublished Opinion No. 430 (Idaho Ct. App. April 6, 2004)). Consequently, because these issues have already been decided, they are barred by the doctrine of res judicata.

2. Even If Ridgley's Claims Are Not Barred By The Doctrine Of Res Judicata, Ridgley's Claims That His Attorney Failed To Meet With Him To Discuss Possible Defenses And Failed To Review Evidence Are Based On Facts Affirmatively Disproved By The Record

"Allegations contained in the application are insufficient for the granting of relief when they are clearly disproved by the record of the original proceedings, or do not justify relief as a matter of law." Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). A district court properly dismisses a petition where at least one element that the petitioner must establish is "clearly disproved" by the record of the underlying criminal case. Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); Chouinard v. State, 127 Idaho 836, 839, 907 P.2d 813, 816 (Ct. App. 1995); Remington v. State, 127 Idaho 443, 446-47, 901 P.2d 134, 137-38 (Ct. App. 1995).

Here, the record of the underlying criminal case "clearly disproves" Ridgley's claims that the district court erred in finding that no genuine issue of material fact was raised by Ridgley's assertion that his attorney spent a limited amount of time with him, failed to discuss his defenses with him, and did not review the audio and video tapes of the interview with his abused step-daughter. Ridgley argues on appeal that the "district court was improperly weighing the evidence [by] balancing Mr. Ridgley's evidence against the testimony of his attorney." (Appellant's Brief, p.11.) The court did no such thing. The district court recognized that the trial court, in ruling on Ridgeley's motion to withdraw his plea, made factual determinations that factually precluded Ridgley's post-conviction deficient performance claim. (R., pp.155-56.)

The district court acknowledged the trial court's previous factual determinations that Ridgley met with his attorney on at least three occasions and spent time enough time with Ridgley to discuss the charges and possible punishment. (R., p.155.) Indeed, the record shows that before Ridgley waived his rights at the preliminary hearing, Ridgley "discussed the matter thoroughly with his attorney." (#29320 R., p.47.) In determining that Ridgley was not entitled to withdraw his guilty plea, the trial court also found that Ridgley insisted and was eager to plead guilty from the beginning and that, consequently, his attorney had no obligation to engage in additional discovery, i.e., review the audio or videotapes or interview witnesses. (#29320 R., p.47.) Consequently, Ridgley's present post-conviction claims based on these facts have no basis because they are facts affirmatively disproved by the record.

3. Ridgley's Post-Conviction Claims That His Attorney Failed To Appreciate His Mental Status And Therefore Failed To Request A Psychological Evaluation Are Also Without Factual Support

Ridgley claims he received ineffective assistance of counsel because his attorney failed to appreciate his mental state (R., pp.4-5) and failed to speak with him about the possibility of "receiving a mental evaluation" (R., p.113). The district court considered these claims and concluded that Ridgley's petition was factually deficient on both Strickland requirements.

Regarding deficient performance, the district court reasoned that Ridgley's petition and supplemental affidavits did not recite any facts suggesting that Ridgley was incompetent at the time he entered his guilty plea. (R., p.155.) The district court further found that Ridgley did not submit facts showing how he was

prejudiced. ((R., pp.159-160.) The district court noted the affidavit submitted by his second attorney in response to the court's notice of its intent to dismiss suggested that there was no factual support for his assertion that he was in "shock" and did not understand what was going on when he entered his plea or that he said anything about his mental state to Mr. Williams, his first attorney. Further, Mr. Hull's affidavit states explicitly that if he was an attorney representing a client in Ridgley's circumstance, he would have requested a mental evaluation and would not have proceeded. (R., pp.118-19.) However, as pointed out by the district court, Mr. Hull never addressed Ridgley's mental status when he was Ridgley's attorney and asking the court to withdraw Ridgley's plea -- indicating that Ridgley was competent and that his mental status was never an issue. (R., p.156-58.)

The district court also determined that Ridgley's own statements regarding his state of mind were conclusory, without factual support and, therefore, insufficient to avoid summary dismissal. The court reasoned:

The only evidence offered in this case that Ridgley was emotionally distraught, in a state of shock, and incompetent are the allegations of Ridgley's own affidavit. Ridgley's own conclusory and bare assertions, alone, are not sufficient to survive summary dismissal. Attorney Williams testified Ridgley appeared to be quite competent and understood the nature and magnitude of what he was facing. Ridgley never raised the argument of incompetency during the hearing on the motion to withdraw the guilty plea. Nor does Ridgley's petition raise any issue about the failure to assert the mental health issues at the hearing on the motion to withdraw. While Ridgley's affidavit does raise the fact issue that he was emotionally distraught when he entered the guilty plea, the affidavit offers no more than a mere conclusion that he was not competent to understand the nature of the proceedings and knowingly enter into a guilty plea, and is unsupported by any facts as to the alleged mental incompetency.

(R., p.159.) Ridgley has not identified any error in this analysis. Mr. Williams testified that he used his first meeting with Ridgley to gauge Ridgley's "emotional state" and that he told Ridgley they would meet again to discuss the charges. (5/28/02 Tr., p.43, L.17 - p.44, L.11.) After subsequent visits Ridgley decided to plead guilty. (5/28/02 Tr., p.42, Ls.11-16.) Williams testified that Ridgley, at this latter time, "knew exactly what he was doing and what the plea bargain was and what he was assuming." (5/28/02 Tr., p.42, Ls.11-16.) This testimony is consistent with the psychological evaluation done for purposes of sentencing. That report found that although Ridgley was "emotionally overwhelmed" there was absolutely no "impairment in intellectual functioning." (R., p.144; #29320 PSI Psychological Report, p.30.) Accordingly, to the extent that Ridgley asserts his emotional state is evidence that his attorney should have known that he could not intelligently, knowingly, and voluntarily enter his guilty plea, it is a fact disproved by the record. As such, there is no factual support for Ridgley's claim.

Moreover, even if there was deficient performance, Ridgley failed to submit facts showing how he was prejudiced. Where a guilty plea is entered a defendant must show a reasonable probability that but for his counsel's errors the defendant would not have pled guilty and would have gone to trial. Gilpin-Grubb v. State, 138 Idaho 76, 82, 57 P.3d 787, 793 (2002). As pointed out by the district court, Ridgley has not identified facts showing that an evaluation would have produced any additional information other than what was in the PSI psychological report or that a court, based on Ridgley's assertions, would have even ordered such an evaluation. (R., pp.159-60.)

Ridgley apparently believes he has met his burden simply because his affidavit says that he will go to trial if his post-conviction petition is granted. (R., p.114.) This, however, is not the standard. Ridgley must show a reasonable probability that but for his counsel's deficiencies he would have gone to trial at the time he entered his plea. Ridgley has not made this claim and, even if he did, there is nothing in the record that would support such a claim. Ridgley fails to identify any possible defense and fails to explain how or if his reasons expressed to his initial attorney for not wanting to go to trial have changed. Ridgley relies solely on his conclusory assertion, disproved by the record, that he did not have the mental capacity to enter his plea.

II.

The District Court Properly Dismissed Ridgley's Petition On Grounds Set Forth In The Notice Of Intent To Dismiss

A. Introduction

Ridgley claims the "notice of intent to dismiss did not address any issues relating to Mr. Ridgley's motion to withdraw his guilty plea" and as a result erred in dismissing the petition. (Appellant's Brief, p.16.) Ridgley's claim is without legal merit. Ridgley was not entitled to double notice -- notice of why his response to the district court's initial notice was still deficient.

B. Ridgley Had Adequate Notice Of The Basis For Dismissal Of His Claims

Ridgley asserts that it was improper for the district court to rely on the underlying trial court's factual findings to conclude that Ridgley's claims had no factual basis. Ridgley contends that because he was not put on notice of these

facts -- facts contained in the record -- his claim was improperly dismissed. Ridgley's argument is logically and legally flawed.

Before dismissing a petition for post-conviction relief, a district court is required to give notice of the petition's deficiencies. Griffin v. State, 142 Idaho 438, 441, 128 P.3d 975, 978 (2001) ("[T]he court may not dismiss a petition *sua sponte* without first giving notice of its intent, stating the grounds for the dismissal with particularity, and allowing the petitioner twenty days in which to respond.") It is undisputed that Ridgley filed a petition and that the district court filed a notice of intent to dismiss. In that notice the court stated with particularity the deficient nature of the petition as to both deficient performance and prejudice -- primarily an absence of factual support. (R., pp.105-11.) Ridgley was given twenty days to respond and he did -- by submitting two additional affidavits, one from himself, and one from his attorney. (R., pp.112-14; 117-20.) The district court considered those affidavits, and the factual assertions contained therein. However, the court concluded the factual information supporting his claim was disproved by facts in the record. Because Ridgley's supplemental affidavits did not cure his petition's identified deficiencies and because Ridgley had been given notice of those deficiencies with the opportunity to respond, the district court dismissed Ridgley's petition.

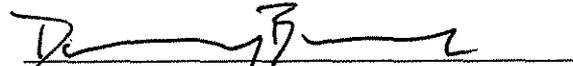
Ridgley apparently believes he should have received notice of the fact that his *response* was deficient. There is no statutory authority or case law that requires a district court to provide this double notice. The case law is clear. A post-conviction petitioner is entitled to particularized notice of his petition's

deficiencies. See Griffin, 142 Idaho at 441, 128 P.3d at 978. Ridgley is not entitled to notice of his *response's* deficiencies. Accordingly, Ridgley's claim that he did not receive proper notice is without basis.

CONCLUSION

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

DATED this 26th day of December 2007.


DANIEL W. BOWER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of DECEMBER 2007, I served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

JUSTIN CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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


DANIEL W. BOWER
Deputy Attorney General