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Goldsby v. State Respondent's Brief Dckt. 43144

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ANDANTE GOLDSBY,)
) No. 43144
 Petitioner-Appellant,)
) Kootenai Co. Case No.
 v.) CV-2013-8568
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
)
 _____)

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Andante Goldsby appeals from the district court's summary dismissal of his petition for post-conviction relief, arguing that he presented a material issue of fact regarding the effectiveness of his trial counsel.

Statement Of The Facts And Course Of The Proceedings

On October 29, 2012, pursuant to Goldsby's guilty plea, the district court entered judgment against Goldsby for felony driving under the influence. (R., p.11.) The district court imposed a sentence of six years with three years fixed but retained jurisdiction. (R., pp.11, 42.) Following a jurisdictional review hearing, on August 13, 2013, the district court relinquished jurisdiction but amended its initial sentence to six years with one and a half years fixed. (R., pp.11-12.) Goldsby filed a timely Rule 35 motion for reconsideration, which was subsequently denied. (R., pp.12, 42.)¹

On November 29, 2013, Goldsby filed a timely petition for post-conviction relief in which he claimed his trial counsel had been ineffective. (R., pp.4-10.) In an amended petition, Goldsby later clarified the grounds on which his claim of ineffective assistance was based, alleging that his trial attorney had been ineffective for (1) requesting a continuance for the jurisdictional review hearing; and for failing and/or refusing to (2) inform petitioner that the district court allegedly stated during an in-chamber discussion with counsel that he was considering placing Goldsby on probation; (3) adequately prepare to confront the state's witnesses at the review hearing, despite receiving notice

¹ Though Goldsby timely appealed from the denial of his Rule 35 motion, he later voluntarily dismissed that appeal. (R., p.12.)

of those witnesses; (4) impeach a witness with evidence in counsel's possession; (5) challenge the state's recommendation of relinquishment with evidence of racism against Goldsby during his rider; and (6) obtain additional evidence beneficial to Goldsby in relation to his Rule 35 motion. (R., p.13.)

The state filed a motion for summary dismissal of Goldsby's petition, arguing that Goldsby failed to establish both that his trial counsel's performance was deficient and that he suffered any resulting prejudice. (R., pp.21-30.) The district court granted the state's motion for summary dismissal. (R., pp.41-53.) Goldsby filed a timely notice of appeal. (R., pp.55-57.)

ISSUE

Goldsby states the issue on appeal as:

Did Mr. Goldsby raise a genuine issue of material fact as to whether his defense counsel rendered ineffective assistance of counsel in failing to impeach a State's witness with evidence disproving her testimony, such that it was error for the district court to have summarily dismissed this claim?

(Appellant's brief, p.11.)

The state rephrases the issue as:

Has Goldsby failed to show error in the district court's summary dismissal of his petition for post-conviction relief?

ARGUMENT

Goldsby Has Failed To Show Error In The District Court's Summary Dismissal Of His Petition For Post-Conviction Relief

A. Introduction

In his post-conviction petition, Goldsby asserted that he was entitled to relief claiming, *inter alia*, that his attorney rendered ineffective assistance by allegedly failing to use a specific document to impeach a witness at his rider review hearing. (R., p.14.) The district court summarily dismissed Goldsby's petition. (R., pp.41-51.) On appeal, Goldsby argues that the district court erred by dismissing this post-conviction claim of ineffective assistance of trial counsel. (Appellant's brief, pp.12-19.) Application of the correct legal standards to the facts of this case, however, shows that summary dismissal was appropriate.

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)).

C. The District Court Correctly Dismissed Goldsby's Post-Conviction Petition

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman, 144 Idaho at 522, 164 P.3d at 802;

State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). Generally, the Idaho Rules of Civil Procedure apply to petitions for post-conviction relief. Pizzuto v. State, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, unlike other civil complaints, in post-conviction cases the “application must contain much more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).” Monahan v. State, 145 Idaho 872, 875, 187 P.3d 1247, 1250 (Ct. App. 2008) (quoting Goodwin v. State, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002)). Instead, the application must be supported by a statement that “specifically set[s] forth the grounds upon which the application is based.” Id. (citing I.C. § 19-4903). “The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing I.C. § 19-4903).

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief on the trial court’s own initiative or in response to a party’s motion. “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, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, 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. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). The trial court is not required to conduct an evidentiary hearing prior to dismissing the petition when the alleged facts, even if true, would not entitle the petitioner to relief. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)). "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." Id.

Where the petitioner alleges entitlement to relief based on ineffective assistance of counsel, he must show that his attorney's performance was objectively deficient and that he was prejudiced by that deficiency. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Aragon v. State, 114 Idaho 758, 760-61, 760 P.2d 1174, 1176-77 (1988). To establish deficient performance, the petitioner must overcome the strong presumption that counsel's performance was adequate and "show that his attorney's conduct fell below an objective standard of reasonableness." Baldwin v. State, 145 Idaho 148, 154, 177 P.3d 362, 368 (2008) (citations omitted). "[S]trategic or tactical decisions will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation." Id. To establish prejudice, the petitioner must show "a reasonable probability that but for his attorney's deficient performance the outcome of the proceeding would have been different." Id.

Articulating and applying relevant legal standards, the district court properly addressed and dismissed each of Goldsby's post-conviction claims. (R., pp.41-51.)

The district court determined that an evidentiary hearing was not justified in this case because Goldsby failed to show that his claims warranted relief based upon admissible evidence. (R., p.51.) Goldsby failed to show a reasonable probability that, based on his allegations, the outcome of his proceedings would have been any different. (R., p.51.)

As the district court explained:

Based upon all of the evidence presented, including petitioner's prior offenses and the fact that he had violated the terms of his release prior to sentencing, the court believed that, should probation be ordered, petitioner would violate its terms. Although the court had hoped to do otherwise, incarceration was imposed.

(R., p.50.) Because Goldsby's application failed to raise an issue of material fact, the district court correctly granted the state's motion for summary dismissal. (R., p.51.)

On appeal, Goldsby focuses on his attorney's alleged ineffectiveness for failing to use an "apology and commitment" letter in counsel's impeachment of Ms. Kaschmitter, a witness for the state at Goldsby's jurisdictional review hearing. (Appellant's brief, pp.12-19.) Goldsby's argument fails. First, as the district court correctly noted, Goldsby "has failed to show any standard requiring trial counsel to impeach in the manner petitioner describes." (R., p.49.) Whether and how to cross-examine a witness—whether and how to *impeach* that witness—are strategic decisions and, as noted above, such decisions should not be second-guessed absent evidence of some objective shortcoming. Baldwin, 145 Idaho at 154, 177 P.3d at 368. Goldsby never identified evidence of an objective shortcoming in this case. "The constitutional requirement for effective assistance of counsel is not the key to the prison for a defendant who can dredge up a long series of examples of how the case might have been tried better." Ivey v. State, 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). The strategic decisions of

Goldsby's trial counsel do not constitute deficient performance. Goldsby failed to make a *prima facie* showing of deficient performance to support his claim of ineffective assistance of counsel.

Even if Goldsby had raised a *prima facie* claim of deficient performance in regards to his trial counsel's strategic decision, Goldsby still failed to show prejudice. Goldsby argues that, "[h]ad his counsel impeached Ms. Kaschmitter's rider review hearing testimony with the Apology & Commitment letter, there is a reasonable possibility that he would have received probation." (Appellant's brief, pp.17-19.) There is no such possibility. Goldsby claims that his counsel "attempt[ed] to undermine [the witness's] credibility on multiple fronts." (Appellant's brief, pp.16-17.) But counsel's attempts made no difference in the ultimate outcome, and Goldsby has failed to present evidence showing how attempting to undermine the witness's credibility in the particular way Goldsby now thinks counsel *should* have attempted to undermine the witness's credibility would have made a difference. As noted above, the district court relinquished jurisdiction because of Goldsby's "prior offenses and the fact that he had violated the terms of his release prior to sentencing." (R., p.50.) The manner in which trial counsel attempted to impeach a state's witness could not have changed Goldsby's prior offenses; it could not have changed his violation of the terms of his release prior to sentencing; it could not have changed the outcome of Goldsby's case.

Because Goldsby failed to make a *prima facie* showing of ineffective assistance of counsel, the district court correctly dismissed his petition for post-conviction relief. The district court's order should be affirmed.

CONCLUSION

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

DATED this 11th day of March, 2016.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of March, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ERIK R. LEHTINEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd