

6-23-2016

# Goldsby v. State Appellant's Reply Brief Dckt. 43144

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

ANDANTE GOLDSBY,	)	
	)	NO. 43144
Petitioner-Appellant,	)	
v.	)	KOOTENAI COUNTY NO. CV 2013-
	)	8568
STATE OF IDAHO,	)	
	)	APPELLANT'S REPLY BRIEF
Respondent.	)	
_____	)	

**REPLY BRIEF OF APPELLANT**

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

**HONORABLE FRED M. GIBLER**  
District Judge

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## STATEMENT OF THE CASE

### Nature of the Case

In a post-conviction petition, Mr. Goldsby alleged that he received ineffective assistance of counsel in conjunction with his counsel's performance at his jurisdictional review hearing. The relevant claim to this appeal is that his counsel was ineffective because, despite having in her possession documentary evidence proving the falsity of a "rider" staff member's testimony, she failed to impeach the staff member with that evidence at the review hearing.

This claim was summarily dismissed by the district court. On appeal, Mr. Goldsby contends the district court erred in summarily dismissing this claim. He contends there is a genuine issue of material fact as to whether counsel was ineffective for failing to impeach the rider staff member with the document already in her possession.

In response, the State argues that Mr. Goldsby failed to raise a genuine issue of fact as to either of the two prongs of the ineffectiveness standard (deficient performance or prejudice) and, therefore, he has failed to show error in the district court's summary dismissal of his petition. (See Resp. Br., pp.7-8.)

The purpose of this reply brief is to briefly address the State's argument concerning the "deficient performance" prong of the requisite analysis. As to the "prejudice" prong, the State's argument is unremarkable and does not warrant a response so Mr. Goldsby will stand on the argument made in his Appellant's Brief (pp.17-19).

### Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were previously set forth in detail in Mr. Goldsby's Appellant's Brief and, therefore, are not repeated herein.

### ISSUE

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?

## ARGUMENT

### Mr. Goldsby Presented 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

The State argues, *inter alia*, that Mr. Goldsby failed to raise a genuine issue of material fact as to his counsel's performance in failing to cross-examine an adverse witness with impeaching evidence in her custody was deficient because counsel's cross-examination was a matter of strategy that cannot be challenged in the absence of some objective shortcoming. (Resp. Br., pp.7-8.) The State's argument thus rests on the premise that the failure to impeach Ms. Kaschmitter with the Apology & Commitment letter was a strategic decision. (See *id.*)

The key premise underlying the State's argument is false. There is no indication that counsel's omission was the result of a strategic or tactical decision. In fact, there is no evidence at all indicating why Mr. Goldsby's counsel failed to impeach Ms. Kaschmitter with the letter. The record contains an affidavit from Mr. Goldsby's counsel, Sarah Sears; however, that affidavit does not address the question of why she failed to impeach Ms. Kaschmitter with the Apology & Commitment letter. (See R. Ex., pp.1-2.) It *could be* that Ms. Sears had some strategic or tactical decision not to confront Ms. Kaschmitter with the letter. But it could just as easily be that Ms. Sears made a mistake and overlooked the Apology & Commitment letter. In fact, the latter explanation is far more feasible given that there is no reason not to impeach an adverse witness with a readily-available document proving the falsity of her testimony on the witness stand—especially where impeaching that witness' testimony is clearly the objective of the cross-examination. (See App. Br., pp.16-17 (discussing other ways in

which counsel attempted to impeach Ms. Kaschmitter).) Until the district court holds an evidentiary hearing where Ms. Sears could be called as a witness (or one of the parties produces a second affidavit from Ms. Sears specifically addressing the question of why she did not impeach Ms. Kaschmitter with the letter), it will remain unknown whether the challenged action was a strategic decision. Thus, there is open question of material fact which precluded summary dismissal.

### CONCLUSION

For the foregoing reasons, as well as those set forth in his Appellant's Brief, Mr. Goldsby respectfully requests that this Court vacate the district court's judgment and its order summarily dismissing his petition, and it remand this case to the district court for an evidentiary hearing on Mr. Goldsby's claim that his counsel was ineffective for failing to impeach Ms. Kaschmitter with the inmate essay.

DATED this 23<sup>rd</sup> day of June, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ERIK R. LEHTINEN  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of June, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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\_\_\_\_\_/s/\_\_\_\_\_  
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Administrative Assistant

ERL/eas