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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRADLEY JOSEPH VANZANT,)	
)	No. 43371
Petitioner-Appellant,)	
)	Ada Co. Case No.
v.)	CV-2014-10189
)	
STATE OF IDAHO,)	
)	
Defendant-Respondent.)	
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BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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STATEMENT OF THE CASE

Nature of the Case

Bradley Joseph Vanzant appeals from the district court's judgment affirming the magistrate's dismissal of his petition for post-conviction relief.

Statement of Facts and Course of Proceedings

The state charged Vanzant with Domestic Battery in the Presence of a Child and Driving Without Privileges, third offense. (R., p. 229.) Vanzant hired private counsel, Ms. Maloney. (Id.)

On May 2, 2013, the day scheduled for jury trial, the court reset the trial because "Court is in day 2 of another trial, [defense counsel] unavailable." (R., p. 62.) At the May 2, 2013 hearing, Vanzant was represented by Mr. Stoppello, who was appearing for Ms. Maloney. (Id.)

On May 23, 2013, Vanzant signed a written plea deal. (R., p. 64.) The Domestic Battery in the Presence of a Child was amended to Intentional Destruction of a Telecommunication Line or Telecommunication Instrument, and the Driving Without Privileges, third offense, was dismissed. (R., pp. 64, 229.) The state agreed to recommend two years unsupervised probation, waive fines and recommend 180 days of jail with 165 days suspended and credit for 15 days served. (R., p. 64.) The magistrate followed the plea agreement. (R., p. 65.)

Months later, Vanzant moved to withdraw his guilty plea because he discovered that Ms. Maloney had been charged with Driving Under the Influence during the pendency of his case. (R., pp. 66-70, 229-230.) The magistrate denied the motion, holding that Vanzant's plea was knowingly, intelligently and

voluntarily made. (R., p. 70.) Vanzant appealed to the district court and the district court affirmed the magistrate court. (R., p. 72-79.) The district court held, in part:

The court finds that [the magistrate] did not abuse his discretion in denying Mr. Vanzant's amended motion to withdraw his guilty plea. Mr. Vanzant has not demonstrated that Ms. Maloney's performance was affected by her pending criminal charges, nor has he even attempted to do so.

(R., p. 78.)

Vanzant filed a Petition for Post-Conviction Relief alleging ineffective assistance of counsel. (R., pp. 4-9.) Vanzant claimed that Ms. Maloney's representation was ineffective because of her pending Driving Under the Influence charge, and alleged she failed to investigate medical records regarding Vanzant's knee. (Id.)

The magistrate appointed post-conviction counsel, and, with the court's permission, Vanzant filed an Amended Verified Petition for Post Conviction Relief. (R., pp. 38-46.) The state answered. (R., pp. 47-80.) The magistrate gave a notice of intent to summarily dismiss Vanzant's petition. (R., p. 81.) The state also filed a motion for summary dismissal. (R., pp. 83-91.)

Vanzant filed a Second Verified Petition for Post Conviction Relief. (R., pp. 92-105.) Vanzant also filed an Affidavit in Support of his Second Verified Petition for Post Conviction Relief. (R., pp. 106-108.) Vanzant filed a response to the magistrate's notice of intent and to the state's motion for summary dismissal. (R., pp. 109-134.) The magistrate entered an order summarily dismissing Vanzant's petition, holding the ineffective assistance of counsel claim

was raised on direct appeal and could not be re-litigated in a post-conviction proceeding. (R. pp. 135-136.) Vanzant appealed to the district court. (R., pp. 138-140.)

On intermediate appeal, the district court first determined that Vanzant's ineffective assistance of counsel claim was not considered on his direct appeal and thus could be raised in his post-conviction petition. (R., pp. 233-234.) The district court then considered Vanzant's claims of ineffective assistance of counsel and found all of his claims to be conclusory and that Vanzant failed to establish he was prejudiced by his counsel's pending criminal charge. (R., pp. 235-241.) The district court affirmed the magistrate's order of summary dismissal. (R., pp. 229-242.) Vanzant timely appealed. (R., pp. 246-248.)

ISSUE

Vanzant states the issue on appeal as:

Whether the District Court Erred in Affirming the Summary Dismissal of the Petition for Post-Conviction Relief?

(Appellant's brief, p. 2.)

The state rephrases the issue as:

Has Vanzant failed to show the district court erred when it affirmed the magistrate's summary dismissal of his post-conviction petition?

ARGUMENT

Vanzant Has Failed To Show The District Court Erred When It Affirmed The Magistrate's Dismissal Of His Petition For Post-Conviction Relief

A. Introduction

Vanzant has failed to show the district court erred when it affirmed the magistrate's dismissal of his post-conviction petition. Vanzant failed to make a prima facie showing that his counsel's pending Driving Under the Influence charge caused any deficient performance by his counsel. Vanzant also failed to make a prima facie showing of any resulting prejudice or that it would have been rational for him to reject the very favorable plea deal he received from the state.

B. Standard Of Review

When reviewing the decision of a district court sitting in its appellate capacity, the Idaho appellate courts directly review the district court's decision. State v. Loomis, 146 Idaho 700, 702, 201 P.3d 1277, 1279 (2009). The appellate courts are procedurally bound to affirm or reverse the decision of the district court. State v. Trusdall, 155 Idaho 965, 968, 318 P.3d 955, 958 (Ct. App. 2014); Pentico v. State, 159 Idaho 350, ___, 159 P.3d 359, 362 (Ct. App. 2015).

"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) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Vanzant Has Failed To Show The District Court Erred When It Determined That Vanzant's Petition Was Supported By Mere Conclusory Assertions

The district court affirmed the magistrate's summary dismissal of Vanzant's petition for post-conviction relief because Vanzant's petition was not supported by admissible evidence and his allegations were only supported by mere conclusory assertions. (R., pp. 235-241.) On appeal, Vanzant has failed to show the district court erred.

"Idaho Code § 19-4906 permits a court to rule summarily on applications for post-conviction relief." Workman, 144 Idaho at 523, 164 P.3d at 803. "A court may grant the motion of either party under I.C. § 19-4906(c), or may dismiss the application sua sponte under I.C. § 19-4906(b)." Id. Summary disposition of a post-conviction petition "is appropriate if the applicant's evidence raises no genuine issue of material fact." Id. at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b),(c)). "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)).

"When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law." Schultz v. State, 153 Idaho 791, 796, 291 P.3d 474, 479 (Ct. App. 2012) (citing State v. Payne, 146 Idaho

548, 561, 199 P.3d 123, 136 (2008); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994)). “Moreover, because the district court rather than a jury will be the trier of fact in the event of an evidentiary hearing, the district court is not constrained to draw inferences in the petitioner’s favor, but is free to arrive at the most probable inferences to be drawn from the evidence.” Id. (citing State v. Yakovac, 145 Idaho 437, 444, 180 P.3d 476, 483 (2007); Wolf v. State, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011); Hayes v. State, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008)).

In order to survive summary dismissal of a claim alleging ineffective assistance of counsel, the petitioner “must establish that: (1) a material issue of fact exists as to whether counsel’s performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced the claimant’s case.” Schoeger v. State, 148 Idaho 622, 624, 226 P.3d 1269, 1271 (2010) (citing Strickland v. Washington, 466 U.S. 668, 687-88 (1984)).

To establish deficient performance the petitioner must overcome the strong presumption that trial counsel performed within the wide range of professional assistance by proving trial counsel’s actions fell below an objective standard of reasonableness. State v. Shackelford, 150 Idaho 355, 382, 247 P.3d 582, 609 (2010); Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). To meet this burden “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Strickland, 466 U.S. at 687. The applicant

bears a heavy burden in proving that his attorney's performance was deficient. Davis, 116 Idaho at 406, 775 P.2d at 1248.

To satisfy the prejudice element, where the petitioner was convicted upon a guilty plea, the petitioner must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Popoca-Garcia v. State, 157 Idaho 150, 152, 334 P.3d 824, 826 (Ct. App. 2014) (citing Plant v. State, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006)). "In order to obtain relief, a petitioner must show that a decision to reject the plea bargain would have been rational under the circumstances." Keserovic v. State, 158 Idaho 234, 239, 345 P.3d 1024, 1029 (Ct. App. 2015) (citing Padilla v. Kentucky, 559 U.S. 356, 372 (2010)). All of Vanzant's claims fail both prongs.

1. Vanzant Has Failed To Make A Prima Facie Showing That His Counsel's Pending Criminal Charge Resulted In A Lack Of Preparation That Caused A Deficient Performance And Resulting Prejudice

On May 2, 2013, the magistrate continued Vanzant's trial because "Court is in day 2 of another trial, [defense counsel] unavailable." (R., p. 62.) Vanzant alleged his counsel was unavailable because she had been arrested for DUI and that arrest meant she was unprepared. (R., pp. 94-95, 236.) The district court summarily dismissed this claim because it was a mere conclusory statement:

a. Preparation

As set forth in the Statement of Issues, the appellant contends "Ms. Maloney was not prepared to proceed with Mr. Vanzant's trial on May 2, 2013 as she had been arrested and incarcerated on an alcohol related charge that morning. That lack of preparation fell below the objective standard of reasonableness

and caused the Petitioner to be concerned about a competent defense at trial and contributed to his involuntary decision to plead guilty. Although Petitioner was unaware of Ms. Maloney's criminal conduct at the time he entered his guilty plea, he was concerned about a competent defense at trial due to the continuance which contributed to his involuntary decision to plead guilty." Second Verified Amended Petition for Post-Conviction, at 4.

These are conclusory allegations. Further, the trial was continued, resulting in no immediate prejudice to the appellant. The appellant subsequently pled guilty pursuant to a plea agreement with what appears to be very favorable terms for him. He was not forced to accept the terms at the time of the initial trial setting when concerns would have been understandable.

(R., p. 236.)

On appeal, Vanzant argues that his counsel's arrest, "fell below the objective standard of reasonableness" and caused him prejudice "because he became concerned about the ability to receive a competent defense at trial" and because he was not consulted about the trial reset. (Appellant's brief, p. 7.) Vanzant's argument fails for at least two reasons. First, Vanzant failed to show that the trial being continued on May 2nd was somehow an error of his counsel. According to the record, the magistrate continued Vanzant's trial for two reasons, "Court is in day 2 of another trial, [defense counsel] unavailable." (R., p. 62.) The continuance was not entirely due to his defense counsel's unavailability. Vanzant only showed that his counsel was arrested (see R., pp. 102-03), but he failed to produce any evidence that the arrest resulted in any actual deficient performance by his counsel. Further, Vanzant failed to present any evidence that the continuance prejudiced him. The trial was continued, and prior to trial, Vanzant received a very favorable plea deal. Because Vanzant failed to make a

prima facie showing of either Strickland prong he has failed to show the district court erred.

2. Vanzant Failed To Make A Prima Facie Showing That His Trial Counsel Was Ineffective For Not Investigating Unrelated Medical Records

Vanzant alleged that his trial counsel was ineffective for not investigating the “Veteran’s Administration records regarding issues with his knee and his medication” because “[t]he issues with Mr. Vanzant’s knee would have shown to a jury that he was unable to commit the acts that [the victim] claimed occurred.” (R., pp. 94-95.) The district court reviewed this allegation and held that Vanzant only made conclusory allegations and did not explain how these unspecified medical records regarding his knee would have provided a defense:

The appellant does not specify how any knee issues would have prevented him from using his hands to strike [the victim] with the brace. He also does not specify how this would negate his admission to the investigating officer that he did strike [the victim] with his brace, but it was not intentional. See Boise Police Department Supplemental Report, at 3 (DR# 2012-22940): “Vanzant admitted to swinging around and striking her with his knee brace on her leg ... Vanzant clarified to me that he inadvertently struck her on the leg with his brace and that he didn’t mean for it to happen.”

The appellant’s contentions are conclusory. He has not specified what these medical records were and how they would have demonstrated that he could not have committed the domestic battery offense.

(R., p. 237.)

On appeal, Vanzant merely reiterates the same argument rejected by the district court. (See Appellant’s brief, p. 8.) In both his petition and brief on appeal, Vanzant does not explain what his knee issues were or how those issues

would have prevented him from using his hands to strike the victim or somehow negate his admissions to the officer. (See R., p. 237; Appellants brief, p. 8.) Nor has he shown how these knee issues related to the charge to which he actually pled guilty. Vanzant never provided his medical records as part of his post-conviction petition. Vanzant has failed to show his counsel erred by not “investigating” these unspecified and unrelated knee issues. Vanzant failed to support this conclusory allegation and the district court did not err when it summarily dismissed this claim.

3. Vanzant Failed To Show Any Conflict Of Interest Or That Any Conflict Would Constitute Deficient Performance

Vanzant alleged that Ms. Maloney had a conflict of interest because she was facing a DUI charge, and Mr. Stoppello, who represented Vanzant at the continued May 2nd hearing, had a conflict because he was also representing Ms. Maloney. (R., pp. 95, 107.) Regarding Mr. Stoppello, Vanzant alleged:

21. Ms. Maloney [defense counsel] did not provide effective assistance of counsel when she had another attorney appear in her place without the prior agreement of Mr. Vanzant. Further, Mr. Vanzant was never apprised of the potential conflict of interest that Mr. Stoppello was representing Mr. Vanzant at the same or nearly the same time as his attorney, Ms. Maloney.

(R., p. 95.) Vanzant’s supporting affidavit alleged:

12. I was not consulted about Mr. Stoppello appearing on Ms. Maloney’s behalf on May 2, 2013. I did not consent to his appearance on my case.

(R., p. 107.) The district court held that this assertion regarding Mr. Stoppello was conclusory and did not articulate how Vanzant was prejudiced. (R., pp. 237-238.)

This assertion is also conclusory. It is not clear how this situation prejudiced him in the outcome of his cases. Given the favorable terms of his plea agreement, which he agreed to, the assertion of prejudice from this purported “potential conflict” is not reasonable.

(R., p. 238.)

On appeal, Vanzant argues that because Mr. Stoppello was prevented from sharing information regarding Ms. Maloney’s pending DUI with Vanzant at the May 2nd hearing, due to attorney-client privilege, this created an impermissible conflict. (Appellant’s brief, p. 9.) This argument fails on several levels. First, Vanzant has failed to show that Mr. Stoppello was representing Ms. Maloney on May 2nd. According to Vanzant’s exhibits, Mr. Stoppello made his appearance in Ms. Maloney’s case on May 6, 2013. (R., p. 19.) Second, even if Mr. Stoppello were representing Ms. Maloney on May 2, 2013, Vanzant has failed to show how the public records of Mr. Stoppello’s representation and Ms. Maloney’s arrest would be protected by attorney-client privilege. Finally, as the district court pointed out, it is “not clear how this situation prejudiced [Vanzant] in outcome of his cases.” (R., p. 238.) Mr. Stoppello appeared in Vanzant’s case only once, at the May 2, 2013 hearing where the magistrate continued the trial because of the court’s schedule and Ms. Maloney’s unavailability. (R., p. 62.) Vanzant has failed, both below and on appeal, to show Mr. Stoppello had any sort of conflict of interest or that a conflict prejudiced Vanzant.

Vanzant also alleged that he did not receive effective assistance of counsel because Ms. Maloney “did not discuss the potential conflict of interest that she had a pending criminal law violation in the same jurisdiction as Mr.

Vanzant at the same time his case was pending.” (R., p. 95.) Vanzant elaborated on this claim in his supporting affidavit, as follows:

11. I was not informed that Ms. Maloney had a pending criminal case at the time she was representing me. If I had known I would have ended Ms. Maloney’s representation. I believe there was a conflict of interest in Ms. Maloney having a pending criminal case at the same time that she represented me.

(R., p. 107.) The district court dismissed this claim on the basis it was conclusory.

This assertion is also conclusory. The appellant has not specified how he was prejudiced by this “potential conflict of interest.” It is not apparent that there is a reasonable probability that he would have insisted on going to trial rather than accept the plea bargain.

(R., p. 238.)

On appeal, Vanzant again argues that if he had known about Ms. Maloney’s DUI charge, he would have ended her representation and sought other counsel. (Appellant’s brief, p. 9.) Vanzant’s argument again fails to establish that Ms. Maloney did anything that rendered her performance deficient. Vanzant does not point to any law that requires an attorney to inform her clients regarding all of her interactions with law enforcement. Nor do the Idaho Rules of Professional Conduct prevent an attorney from practicing law in a county in which she is a party to an unrelated legal case. See I.R.P.C. 1.7, 1.8. Vanzant has failed to establish Ms. Maloney’s performance was in any way deficient.

Further, Vanzant has failed to show he was prejudiced. The district court provided a detailed examination of the charges and facts against Vanzant. (R., pp. 238-240.) There was substantial evidence of Vanzant’s guilt. (See R., pp.

169-172, 238-240.) Vanzant failed to allege, much less present any evidence to show that it would have been rational for him to reject the plea bargain under the circumstances. See Keserovic, 158 Idaho at 239, 345 P.3d at 1029. On appeal, Vanzant argues that because Vanzant had served his sentence before filing his petition, it would now be rational for him to reject the plea bargain:

The District Court's reasoning was that Vanzant would not have gone to trial on more serious charges but have accepted the plea offer because of the reduced exposure to charges and penalties. This reasoning, however, does not consider that Vanzant had already served his sentence at the time he filed his petition.

(Appellant's brief, p. 10.) Vanzant's argument fails because he must show that it would have been rational for him to reject the plea offer, at the time of plea offer, not at the time he filed his post conviction petition.¹ See e.g. Keserovic, 158 Idaho at 239, 345 P.3d at 1029; Icanovic v. State, ___ Idaho ___, 2015 WL 9315740, at *6 (Idaho Dec. 23, 2015).

As the district court pointed out, Vanzant received "a plea agreement with what appears to be very favorable terms for him." (R., p. 236.) The state amended the Domestic Battery in Presence of a Child to Interference with a 911 call, and dismissed the Driving Without Privileges, third offense. (R., p. 177.) The state also agreed to waive fines, and to recommend unsupervised probation, credit for time served and suspension of the balance of his jail sentence. (Id.) Vanzant has failed to show that it would have been rational under the circumstances for him to reject this very favorable plea bargain.

¹ It is also not rational for Vanzant to reject the plea deal after he served his sentence, because vacating the plea deal and conviction would again subject Vanzant to additional charges and penalties.

Vanzant has failed to show any conflict of interest that caused his attorneys to perform deficiently and failed to show any prejudice.

CONCLUSION

The state respectfully requests that this Court affirm the district court's judgment affirming the magistrate's summary dismissal of Vanzant's post-conviction petition.

DATED this 16th day of February, 2016.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of February, 2016, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

ADAM KIMBALL
DEPUTY ADA COUNTY PUBLIC DEFENDER
200 W. FRONT STREET, SUITE 1107
BOISE, IDAHO 83702

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

TST/dd