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## Vanzant v. State Respondent's Brief Dckt. 44269

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

BRADLEY JOSEPH VANZANT,	)	
	)	No. 44269
Petitioner-Appellant,	)	
	)	Ada County Case No.
v.	)	CV-PC-2015-17561
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
<hr/>		

**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**

**HONORABLE SAMUEL A. HOAGLAND  
District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Bradley Joseph Vanzant appeals from the summary dismissal of his petition for post-conviction relief.

### Statement Of The Facts And Course Of The Proceedings

Vanzant filed a petition for post-conviction relief challenging his conviction for possession of a controlled substance. (R., pp. 4-11.) He asserted that his guilty plea was not legally valid and was the product of ineffective assistance of counsel, that his counsel conducted an inadequate investigation of the case, that some unspecified “policy and practice” of the public defender’s office prejudiced him, and that appellate counsel was ineffective. (R., p. 5.) In his affidavit he specified that he was asserting his counsel was ineffective for not filing a motion to suppress evidence of a warrantless search of his car. (R., p. 9.) The attached police report shows that police stopped Vanzant at about 1:00 a.m. for not having the lights of his truck on. (R., p. 13.) Officers later arrested him for driving without privileges. (Id.) The passenger reported that Vanzant had placed “drugs of some sort” in a panel of the driver’s door. (Id.) A drug dog subsequently alerted on the car. (R., p. 14.) A search of the door where the passenger indicated Vanzant had placed his drugs resulted in the discovery of a baggie and a bindle that both contained methamphetamine. (Id.) The methamphetamine “with its packaging” weighed 2.4 grams. (Id.)

The district court granted Vanzant's motion requesting appointment of counsel, and a conflict counsel for the public defender appeared in the case. (R., pp. 35-37, 39, 44-45.)

The state filed an answer and motion for summary disposition asserting Vanzant had failed to support his claims with evidence or that his claims were disproven by the record of the criminal proceedings. (R., pp. 46-66.) Vanzant, through appointed counsel, filed a response. (R., pp. 76-82.) The district court held a hearing on the motion at which both counsel presented argument. (R., p. 83; Tr., p. 4, L. 15 – p. 11, L. 9.) The district court orally granted the motion, finding the claims either unsupported by evidence or disproven by the record of the underlying criminal case. (Tr., p. 11, L. 10 – p. 13, L. 14.) However, the district court gave Vanzant 20 additional days to respond to dismissal of claims of ineffective assistance of counsel for failing to move to suppress and regarding the unspecified policy and practice of the public defender's office. (Tr., p. 13, L. 15 – p. 15, L. 2.)

Twenty-three days later Vanzant filed a *pro se* "Motion for Conflict Free Counsel." (R., pp. 84-86.) Vanzant claimed his appointed attorney had "taken the position of the prosecuting attorney" and "refused to assist me in presenting my claim to the Court." (R., p. 85.) In support of this allegation he presented a letter from his attorney in which his attorney stated he could not ethically present Vanzant's claims because they lacked a good faith basis in fact or law. (R., pp. 85, 87.)

A few days after Vanzant filed his motion, the district court entered an order granting the state's motion and summarily dismissing the petition. (R., pp. 88-104.) The district court denied the motion for "conflict free" counsel in a footnote on the basis that the constitutional right to counsel did not apply. (R., p. 89, n. 2.) The district court entered judgment, from which Vanzant timely appealed. (R., pp. 105-11.)

## ISSUES

Vanzant states the issues on appeal as:

1. Did the district court err in denying Mr. Vanzant's motion for conflict free counsel without holding a hearing on or conducting any inquiry into the basis for his motion?
2. Did the district court err in denying Mr. Vanzant's motion for conflict free counsel on the basis that Mr. Vanzant did not have a right to effective assistance of counsel?
3. Did the record before the district court support its denial of Mr. Vanzant's motion for conflict free counsel?

(Appellant's brief, pp. 2-3.)

The state rephrases the issues as:

Has Vanzant failed to show any error in the district court's denial of his motion for "conflict free" counsel?

## ARGUMENT

### Vanzant Has Failed To Show Any Error In The District Court's Denial Of His Motion For "Conflict Free" Counsel

#### A. Introduction

Vanzant claimed his appointed post-conviction attorney had a "conflict" and moved for "conflict free" counsel. (R., pp. 84-86.) The "conflict" was that appointed counsel refused to pursue claims that could not be made in good faith. (R., p. 87.) The district court denied the motion. (R., p. 89, n. 2.)

On appeal Vanzant asserts that the district court erred. (Appellant's brief, pp. 3-10.) He first contends that "[t]he failure of the district court to allow<sup>[1]</sup> a hearing or at least make some sort of inquiry into Mr. Vanzant's assertion that his counsel was laboring under a conflict violated the constitutional guarantee of due process." (Appellant's brief, pp. 3-7.) He next contends that the district court "confused conflict-free counsel" with "effective counsel." (Appellant's brief, pp. 7-8.) Finally, he argues that the record "does not support the conclusion that counsel was not laboring under a conflict." (Appellant's brief, pp. 9-10.) None of these arguments withstands scrutiny.

#### B. Standard Of Review

In a post-conviction proceeding, "[t]he decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court." Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004) (citation omitted). "[T]he decision of whether to appoint substitute counsel lies within the

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<sup>1</sup> Vanzant did not request a hearing. (R., pp. 84-86.) Thus the district court did not "fail to allow" a hearing.

discretion of the trial court and will only be reviewed for an abuse of discretion.” State v. Lippert, 152 Idaho 884, 887, 276 P.3d 756, 759 (Ct. App. 2012). On review, the appellate court must determine whether the district court “acted within the boundaries of its discretion, consistent with any legal standards applicable to its specific choices, and whether the court reached its decision by an exercise of reason.” State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994).

C. Vanzant Has Not Shown He Was Entitled To A Hearing On His Motion

The right to conflict-free representation derives from the Sixth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment. Powell v. Alabama, 287 U.S. 45 (1931). The Sixth Amendment guarantees a criminal defendant the right to counsel during all “critical stages” of the adversarial proceedings against him. Estrada v. State, 143 Idaho 558, 562, 149 P.3d 833, 837 (2006) (citations omitted). Although this right encompasses the first direct appeal, it does not extend to post-conviction proceedings. Lawrence v. Florida, 549 U.S. 327, 336-37 (2007); Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). See also Murphy v. State, 156 Idaho 389, 394, 327 P.3d 365, 370 (2014) (quoting Coleman v. Thompson, 501 U.S. 722, 752 (1991)) (“[T]here is no constitutional right to an attorney in state post-conviction proceedings.”); Hall v. State, 155 Idaho 610, 616, 315 P.3d 798, 804 (2013) (“[T]he right to counsel in post-conviction proceedings is not a constitutional right.” (internal quotations and citations omitted)).

As the Idaho Supreme Court has explained, a post-conviction petition is a civil proceeding and so provides the clearest example of a proceeding to which the Sixth Amendment right to counsel, and the correlative right to conflict-free counsel, do not apply. See Hall, 155 Idaho at 616, 315 P.3d at 804. Because Vanzant lacks a Sixth Amendment right to counsel to pursue his post-conviction petition, the district court also had no free-standing duty to inquire into any alleged conflict of interest. Rios-Lopez v. State, 144 Idaho 340, 343-344, 160 P.3d 1275, 1278-1279 (Ct. App. 2007) (procedures required to rule on a request for substitute counsel made by a criminal defendant with a Sixth Amendment right to counsel do not apply in post-conviction proceedings).

At a minimum, due process does not require a hearing on a request for substitute post-conviction counsel where a “written motion adequately apprised the district court of the basis for [the] request.” Rios-Lopez, 144 Idaho at 343, 160 P.3d at 1278. Here the motion adequately apprised the district court of the basis for the request: counsel’s refusal to pursue claims he did not think he could in good faith ethically pursue. (R., pp. 84-87.) That there was no good faith basis for claiming that trial counsel was ineffective for not filing a suppression motion is fully supported by the record showing reasonable suspicion for the traffic stop (failure to turn on front or rear lights) and probable cause for searching the car (the passenger’s report of drugs in the car and a hit by a drug dog). (R., pp. 13-14.) Deciding the motion for “conflict free” counsel without a hearing did not violate Vanzant’s due process rights.

Vanzant next argues that when post-conviction counsel operates under a conflict he is not only “ineffective,” he is “ineligible to be appointed at all.” (Appellant’s brief, pp. 7-8.) This argument fails for several reasons, including but not limited to the fact it is “not supported by any cogent argument or authority.” Hart v. Idaho State Tax Comm’n, 154 Idaho 621, 625, 301 P.3d 627, 631 (2012) (quotations omitted). The argument also fails on the merits. Vanzant was not entitled to a hearing because he changed his argument (on appeal) from one of ineffective assistance of counsel because of a conflict of interest to a claim of ineligibility of counsel because of a conflict of interest. Either way, his motion failed to set forth a *prima facie* claim of a conflict, so no hearing was required.

Finally Vanzant contends the record “does not support the conclusion that counsel was not laboring under a conflict of interest and thus did not support the denial of the motion for appointment of conflict free counsel.” (Appellant’s brief, pp. 9-10.) Wading through the thicket of negatives, Vanzant seems to be arguing that because the record does not show the absence of a conflict, “this Court must either find that the motion was well-founded and must be granted, or in the alternative, that the district court must conduct a hearing or other inquiry into the basis of the motion” in order to develop a record showing a conflict. (Id.) The argument that a trial court’s only options when the record does not establish the claims in a motion are to grant the motion or conduct a hearing until those claims are proved is unsupported by any relevant legal authority, and should thus be disregarded. Hart, 154 Idaho at 625, 301 P.3d at 631. The argument overlooks

the most obvious option where a movant fails to establish a claim, which is to deny the motion.

In this case the district court had dismissed most of Vanzant's post-conviction claims, but had granted 20 days for Vanzant to supplement any response in relation to claims of ineffective assistance of counsel for failing to move to suppress and regarding an unspecified policy and practice of the public defender's office. (Tr., p. 13, L. 15 – p. 15, L. 2.) Counsel provided Vanzant a letter stating he did not intend to present any additional response to the pending dismissal of those claims because he could not in good faith and ethically do so. (R., pp. 85, 87.) Vanzant's claim that this made counsel effectively the prosecutor, and thus created a conflict of interests, was specious. The district court did not abuse its discretion in denying Vanzant's motion for "conflict free" counsel without ordering some sort of hearing on the motion because there was no *prima facie* showing of any potential conflict. Vanzant has failed to show error.

#### CONCLUSION

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

DATED this 24th day of October, 2016.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of October, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

DEBORAH WHIPPLE  
NEVIN, BENJAMIN, McKAY & BARTLETT LLP

at the following email addresses: [dwhipple@nbmlaw.com](mailto:dwhipple@nbmlaw.com) and [lm@nbmlaw.com](mailto:lm@nbmlaw.com).

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

KKJ/dd