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Larson v. State Appellant's Brief Dckt. 44363

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD LARSON,)	
)	NO. 44363
Petitioner-Appellant,)	
)	BONNER COUNTY NO. CV 2016-647
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

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

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Richard Larson appeals from the district court's Judgment summarily dismissing his Petition for Post-Conviction Relief. On appeal Mr. Larson contends, in what appears to be an issue of first impression for the Idaho Supreme Court, that the district court erred in summarily dismissing his petition as untimely because proper application of the prison mailbox rule served to make the petition timely filed, despite the fact that Mr. Larson mistakenly wrote the numerical address of the prosecutor, instead of that of the addressee, the Clerk of the District Court at the Bonner County Courthouse.

Statement of the Facts and Course of Proceedings

After a jury found him guilty of two counts of aggravated assault, the district court sentenced Richard Larson to serve an aggregate term of ten years, with four years fixed. (R., p.3.) Mr. Larson appealed from the initial conviction, but the Idaho Court of Appeals affirmed the convictions and sentences. (See *State v. Larson*, 2014 Opinion No. 64S (Ct. App. Nov. 3, 2014); R., p.4.)

Mr. Larson's Petition for Post-Conviction Relief was filed on May 2, 2016. (R., pp.3-75.) He claimed that an investigating officer altered evidence at the crime scene, the prosecution failed to disclose Gary Johnston as an expert witness, his trial counsel was ineffective for failing to advise Mr. Larson of his rights under *Estrada v. State*, 143 Idaho 558 (2001), for waiving the preliminary hearing, failing to investigate the case and failing to move for a mistrial, and trial counsel coerced Mr. Larson into testifying at trial in violation of his right to remain silent and protections against self-incrimination. (R., pp.3-75.) On February 16, 2016, Mr. Larson signed and affirmed

that he had sent a copy of the petition to the prosecutor. (R., pp.31-32.) Mr. Larson included in his petition the prison mail log and a letter regarding his initial attempt to file the petition and his recent discovery that the petition was never filed. (R., pp.71-73.)

The district court filed a notice of its intent to dismiss the petition because it was not timely filed. (Augmentation, pp.1-3.)

Mr. Larson responded to the court's notice, and set forth the circumstances surrounding the filing and his subsequent discovery that the petition was not filed as anticipated. (R., pp.81-92.)

Thereafter, the district court entered a written Order to Dismiss Petition. (R., pp.93-98.) The district court dismissed all of Mr. Larson's claims as being untimely, relying on an unpublished decision from the Idaho Court of Appeals. (R., pp.93-98.)

On June 8, 2016, the district court entered a final judgment. (R., pp.93-100.)

Mr. Larson filed a Notice of Appeal timely from the district court's Judgment summarily dismissing his Petition. (R., pp.110-111, 117-119.)

ISSUE

Did the district court err in summarily dismissing Mr. Larson's Petition for Post-Conviction Relief as untimely because it erroneously found that the prison mailbox rule did not apply?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Larson's Petition For Post-Conviction Relief As Untimely Because It Erroneously Found That The Prison Mailbox Rule Did Not Apply

A. Introduction

This court should hold that the district court erred when it found the prison mailbox rule did not serve to make Mr. Larson's petition timely filed, because the prison mailbox rule applies to make the petition timely filed, even when the petition sent to the clerk of the district court is mis-addressed and never reaches the court, so long as the prisoner diligently follows up once he has failed to receive a disposition from the court after a reasonable period of time.

B. Post-Conviction Jurisprudence

A post-conviction petition must be filed within one year from the determination of an appeal or a proceeding following an appeal. Idaho Code § 19-4902(a) provides, in pertinent part, "[a]n application may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. . ." I.C. § 19-4902(a).

While a petition for post-conviction relief must be filed within one year, the "prison mailbox rule," provides that notices of appeal and post-conviction petitions filed by inmates are deemed to be filed on the date they are delivered to prison officials for filing with the court clerk. *Houston v. Lack*, 487 U.S. 266, 273-276 (1988) (holding *pro se* prisoner's Notice of Appeal is deemed filed on the day it is delivered for mailing to prison authorities rather than the day it arrives, as "*pro se* prisoners have no control

over delays between the prison authorities' receipt of the notice and its filing, and their lack of freedom bars them from delivering the notice to the court clerk personally.”); *Munson v. State*, 128 Idaho 639 (1996) (holding the mailbox rule applied to a *pro se* inmate's filing of a petition for post-conviction relief). This is because “the *pro se* inmates lost control over their petitions once the petitions were delivered to prison officials, rather than when the petitions were voluntarily placed in the United States mail or when the petitions were delivered to the court clerk.” *Munson*, 128 Idaho at 643.

Just as I.R.C.P. 56 provides for summary judgment in other civil proceedings, the UPCPA allows for summary disposition of petitions where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. I.C. § 19-4906(c).¹

If there is no question of fact, and if the State is entitled to judgment as a matter of law, dismissal can be ordered either *sua sponte* or pursuant to the State's motion. I.C. § 19-4906(b), (c). If the district court decides to *sua sponte* dismiss the application, I.C. § 19-4906(b) requires the court to notify the parties of its intention and its reasons for so doing. The court must give the petitioner twenty (20) days to respond. I.C. § 19-4906(b); *Saykhamchone v. State*, 127 Idaho 319, 321 (1995). Failure to provide the requisite notice prior to dismissal requires reversal of a judgment denying the application for post-conviction relief. *Saykhamchone*, 127 Idaho at 321.

¹ Although this standard is set forth in section 19-4906(b), which deals with motions for summary disposition, it appears to apply to *sua sponte* dismissals as well. See, e.g., *Small v. State*, 132 Idaho 327, 331 (Ct. App. 1998) (discussing the standard for summary disposition under section 19-4906 *generally* as being whether a genuine issue of material fact has been presented).

Because evaluation of a motion for summary disposition will never involve the finding of contested facts by the district court, it necessarily involves only determinations of law. Accordingly, an appellate court will review a district court's summary dismissal order *de novo*. *Muchow v. State*, 142 Idaho 401, 402-03 (2006).

C. The District Court Erred In Finding That Mr. Larson's Petition For Post-Conviction Relief Was Untimely

In dismissing Mr. Larson's petition, the district court erred in relying on an unpublished Idaho Court of Appeals decision. Not only is the unpublished decision distinguishable from the facts of Mr. Larson's case, persuasive authority in other jurisdictions have held that the prison mailbox rule should protect those prisoners who are unable to file pleadings in person, and that protection logically extends to those who attempt to file a petition with the clerk of the district court. Thus, the district court erred in summarily dismissing Mr. Larson's Petition as untimely.

The district court filed a Notice of Intent to Dismiss on May 16, 2016. (Augmentation, pp.1-3.) In the Notice, the district court noted that it intended to dismiss the claims because the Petition was untimely filed. (Augmentation, p.2.)

Mr. Larson responded within the 20-day time period, and submitted evidence he submitted his Petition to prison authorities to be filed on February 16, 2016, information as to how and when he learned the Petition was not filed, and what steps he had taken once he learned of the problem. (R., pp.81-92.) Mr. Larson included a copy of the prison mail log, and a notarized letter dated April 26, 2016, that he had written to the clerk of the district court regarding his earlier petition. (R., pp.88-90.) He also included

information that, upon learning that his February 16, 2016 petition had never been filed, he mailed a second petition, this one by certified mail. (R., p.83.)

The pleading was addressed to the “Bonner County Courthouse 127 S. First Ave. Sandpoint, ID 83864; Attn CLERK OF THE DISTRICT COURT.” (R., p.72.) However, the Bonner County Courthouse is located one block further south, at 215 S. First Ave., Sandpoint, Idaho 83864. The “127” address was not a residential address, but was instead the address of a building housing the offices of the county prosecutor and the county coroner.² Presumably, such a mistake in address is not uncommon and undoubtedly there is a process to forward county documents to the proper recipient.³ (See, *i.e.*, R., p.98 (Certificate of Service attached to Order to Dismiss Petition, addressed to prosecutor through “COURTHOUSE MAIL”).)

On June 8, 2016, the district court entered an order dismissing the claims as discussed in its Notice. (R., pp.93-98.) The district court stated that the unpublished Idaho Court of Appeals decision in *State v. Norman*, No. 36939, 2011 WL 11067211 (Dec. 23, 2011), distinguished the Idaho Supreme Court’s decision in *Munson*. (R., p.95.) The court dismissed the petition, concluding:

Pursuant to *Norman, supra*, the mailbox rule does not apply in this case because the February 16, 2016 petition was not delivered to the Clerk because Larson failed to address it properly, and not because some other factor, such as the prison mail system, interfered.

(R., pp.95-96).

² See <http://bonnercounty.us/prosecutor/>; <http://bonnercounty.us/coroner/>.

³ Furthermore, as an officer of the court, the prosecutor who received such a pleading intended for the clerk of the district court should have taken steps to ensure it reached the correct destination.

However, the district court erred in concluding that Mr. Larson's post-conviction petition was not timely filed pursuant to the "prison mailbox rule." The Petition was file stamped on May 2, 2016. While this would typically establish the filing date for purposes of determining timeliness, see I.A.R. 14(a), because Mr. Larson filed his notice *pro se* while incarcerated, the "prison mailbox rule" applied. Under the "prison mailbox rule," Mr. Larson's notice of appeal was deemed filed when it was delivered to prison officials for mailing to the court clerk. See *Munson v. State*, 128 Idaho 639 (1996) (holding that the mailbox rule deems a *pro se* prisoner's document filed as of the date it was submitted to prison authorities to be mailed to the court for filing); see also *Hayes v. State*, 143 Idaho 88, 91 (Ct. App. 2006) ("Idaho courts have recognized that *pro se* inmates cannot entirely control when their documents are mailed or delivered to the court clerk because they do not have direct access to the postal service and must rely on prison officials to do the actual mailing. Our courts therefore follow the 'mailbox rule' under which *pro se* inmates' documents are considered to be filed when they are delivered to prison authorities for the purpose of mailing to the court clerk.").

In *Huizar v. Carey*, 273 F.3d 1220, 1223 (9th Cir. 2001), the Ninth Circuit held that the "rationale" of *Houston v. Lack* "applies with equal force" "even where a prisoner's petition is never filed by the court." *Id.* at 1223. In *Huizar*, the petitioner alleged, and the prison mail log confirmed, that he gave his state habeas petition to prison authorities for mailing on April 15, 1996. *Id.* at 1222. That petition was never filed, however, and petitioner then allegedly engaged in a series of efforts aimed at ascertaining the status of his case, including a second effort to file the petition by certified mail. *Id.* Holding that a "prisoner who delivers a document to prison authorities

gets the benefit of the prison mailbox rule, so long as he diligently follows up once he has failed to receive a disposition from the court after a reasonable period of time,” the Ninth Circuit remanded petitioner’s case to permit the district court to determine the truth of petitioner’s allegations of diligence. *Id.* at 1224. See also *Stoot v. Cain*, 570 F.3d 669, 671-672 (5th Cir. 2009) (holding that a pro se prisoner’s pleading is deemed filed on the date it is given to prison authorities for mailing, even if it never reaches the court).

Not only is *Norman*, the case relied upon by the district court, unpublished, (unpublished opinions shall not constitute precedent or be binding upon any court), it is distinguishable in that *Norman* was a case in which the notice of appeal was mailed to the prosecutor’s office and not the clerk of the district court.⁴ *Id.* at *1-2. The *Norman* Court distinguished the holdings in the Idaho Supreme Court case *Munson* and in *State v. Lee*, 117 Idaho 203, 204 (Ct. App. 1990), because *Munson* and *Lee* both addressed their documents to the clerk of the court, holding that the mailbox rule did not apply where *Norman* addressed his notice of appeal to the prosecuting attorney and the attorney general; he did not address his notice of appeal to the clerk of the district court. *Id.* at *2.

Here, there was no return of the mail to Mr. Larson, so Mr. Larson presumed that the addressee received the petition addressed to the Bonner County Courthouse,

⁴ The *Norman* holding is consistent with the *Houston* decision in which the United States Supreme Court held, “[t]here is, however, no dispute here that the notice must be directed to the clerk of the district court-delivery of a notice of appeal to prison authorities would not under any theory constitute a “filing” unless the notice were delivered for forwarding to the district court.” *Houston v. Lack*, 487 U.S. 266, 272–73 (1988).

Attn: Clerk of the District Court. The policy reasons behind the prison mailbox rule support acceptance of the late filing where Mr. Larson has shown that he timely placed the petition addressed to the Clerk of the Court at the Bonner County Courthouse in the mail, even if two numbers of the address were slightly different. Because Mr. Larson was unable to appear at the courthouse and ask for the petition to be filed due to his incarceration, hence the necessity for the application of the prison mailbox rule.

The district court erred in finding the prison mailbox rule did not apply and in summarily dismissing Mr. Larson's petition as untimely.

CONCLUSION

Mr. Larson respectfully requests this Court reverse the district court's order summarily dismissing his petition for post-conviction relief, vacate the judgment, and remand the case for consideration of his claims.

DATED this 21st day of February, 2017.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of February, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RICHARD LARSON
INMATE #103765
ISCC
PO BOX 70010
BOISE ID 83707

BARBARA A BUCHANAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas