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Larson v. State Respondent's Brief Dckt. 44363

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD A. LARSON,)
) No. 44363
 Petitioner-Appellant,)
) Bonner County Case No.
 v.) CV-2016-647
)
 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 BONNER**

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STATEMENT OF THE CASE

Nature Of The Case

Richard A. Larson appeals from the district court's judgment dismissing his untimely petition for post-conviction relief.

Statement Of Facts And Course Of Proceedings

In his underlying criminal case, the state charged Larson with, and a jury convicted him of, two counts of aggravated assault. State v. Larson, Docket No. 40091, 2014 Opinion No. 64S at 1 (Idaho App. Nov. 3, 2014). The Idaho Court of Appeals affirmed Larson's convictions and sentences on November 3, 2014. Id. The Remittitur in Larson's direct appeal issued on February 24, 2015. (See Notice of Intent to Dismiss ("Notice"), filed May 16, 2016 (augmentation).)

Larson filed his *pro se* petition for post-conviction relief on May 2, 2016. (R., pp.3-32.) Larson, however, signed his petition on February 16, 2016, and had it verified that same day. (R., pp.31-32.) Larson's "Certificate of Mailing" also indicates that February 16, 2016, was the date he "deposited the original" of his petition "in the Prison Legal Mail System to be mailed VIA the U.S. Mail postage prepaid to the Clerk of the District Court," with a copy to the prosecutor. (R., p.32.)

The district court issued a notice of intent to dismiss Larson's petition on the grounds that the petition was not timely filed. (See generally Notice.) Larson filed a response to the court's Notice in which he argued that, under the "mailbox rule," his petition was timely filed, and that he mailed a second copy of his petition upon learning that the "original mailing of his petition for Post-Conviction

relief was never filed by the Bonner County Clerk.” (R., pp.82-83 (capitalization original).) Larson attached evidence in the form of exhibits to his response (R., pp.86-92), including an “ISCC Legal Mail Log” indicating two documents were received on February 16, 2016 – one addressed to “Bonner County Prosecuting Attorney, 127 S. First Avenue, Sandpoint, ID,” and one addressed to “Bonner County Courthouse, 127 S. First Avenue, Sandpoint, ID” (R., p.88).

The district court entered an order dismissing Larson’s petition as untimely, and a Judgment of Dismissal. (R., pp.93-97, 99.) Larson filed a motion to reconsider, which the district court denied. (R., pp.101-105, 108.) Larson filed a timely notice of appeal from the judgment. (R., pp.110-111.)

ISSUE

Larson states the issue on appeal as:

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?

(Appellant's Brief, p.3.)

The state rephrases the issue on appeal as:

Did the district court err in concluding that a prisoner is not entitled to the benefit of the mailbox rule when he addresses the envelope containing his post-conviction petition to the correct court, but uses the prosecuting attorney's address instead of the court's address?

ARGUMENT

The District Court Dismissed Larson's Petition As Untimely Based On Its Conclusion That Larson Was Not Entitled To The Benefit Of The "Mailbox Rule" Because Larson Used An Incorrect Street Address When Mailing His Petition To The Bonner County Courthouse

A. Introduction

Larson contends the district court erred in dismissing his post-conviction petition as untimely. (Appellant's Brief, pp.4-10.) More specifically, Larson argues that he was entitled to the benefit of the "mailbox rule" because he timely mailed his petition to the "Bonner County Courthouse," albeit using an incorrect street address, and because he was diligent in resubmitting his petition once he discovered it was not filed. (Id.) The district court declined to apply the mailbox rule because "Larson put the wrong address on the petition that he delivered to prison officials," and "[t]he Court never received that petition because it had the wrong address." (R., p.96.)

B. Standard Of Review

This Court freely reviews the district court's application of the statute of limitation to a post-conviction petition. Schwartz v. State, 145 Idaho 186, 189, 177 P.3d 400, 403 (Ct. App. 2008) (citing Freeman v. State, 122 Idaho 627, 628, 836 P.2d 1088, 1089 (Ct. App. 1992)). The interpretation of a statute is also a question of law subject to free review. State v. Lee, 153 Idaho 559, 561, 286 P.3d 537, 539 (2012).

C. The District Court Dismissed Larson's Petition As Untimely After Concluding The "Mailbox Rule" Did Not Apply

Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition "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 proceedings following an appeal, whichever is later." The district court found that the Remittitur issued in Larson's direct appeal on February 24, 2015. (Notice, p.1.) Larson, therefore, had until February 24, 2016, to file his post-conviction petition. Although Larson signed his petition on February 16, 2016, and submitted it to prison officials for mailing that same day (R., pp.31-32), the petition was not filed with the court until May 2, 2016 (R., p.3), approximately two months after the statute of limitation expired. As a result, the district court notified Larson of its intent to dismiss his petition as untimely. (Notice.)

In response to the court's Notice, Larson submitted documents demonstrating his efforts to timely file his petition, and asked the court to apply the mailbox rule. (R., pp.82-92.) Under the "mailbox rule," a pro se inmate's documents are deemed filed as of the date they are submitted to prison authorities for the purpose of mailing them to the court for filing. Munson v. State, 128 Idaho 639, 642, 917 P.2d 796, 799 (1996). *Pro se* inmates are generally entitled to the mailbox rule with respect to their post-conviction petitions. Id. at 643, 917 P.2d at 800. The rationale underlying the rule is that "*pro se* inmates los[e] control over their petitions once the petitions [are] delivered to prison officials, rather than when the petitions [are] voluntarily placed

in the United States mail or when the petitions [are] delivered to the court clerk.”

Id.

The district court concluded Larson was not entitled to application of the mailbox rule with respect to his post-conviction petition. (R., pp.95-97.) In reaching this conclusion, the district court relied on the Court of Appeals’ unpublished opinion in Norman v. State, 2011 WL 11067211 (Idaho App. Dec. 23, 2011). (R., pp.95-96.) In Norman, the petitioner timely signed a notice of appeal following the dismissal of his post-conviction petition, but the notice was not timely filed. 2011 WL 1106722 *1. The Court of Appeals declined to find Norman’s appeal timely under the mailbox rule because the failure to timely file the notice was attributable to Norman, not prison officials, since Norman did not properly address his notice of appeal for mailing. Id. at *2. The Court reasoned:

The record indicates that 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. The notice was finally delivered to the clerk of the court by the prosecuting attorney, not by the prison mail system. The mailbox rule does not apply in this case because the reason the notice was not delivered was that Norman failed to address it properly and not because some other factor, such as the prison mail system, interfered. In addition, Norman has presented no evidence showing when he placed the notice of appeal into the prison mail system. Therefore, Norman’s first notice of appeal was not timely filed with the clerk of the court.

Norman at *2.

Applying Norman, the district court stated:

In this case, the prison mail log shows that the [sic] Larson put the wrong address on the petition that he delivered to prison officials on February 16, 2016, and that incorrectly addressed petition was mailed out by prison officials that same day. The Court never received that petition because it had the wrong address.

Sometime later, Larson realized his error and caused a second copy of the petition to be mailed out on Wednesday, April 27, 2016 (the date of the postmark), and this copy was received by the Court, and it was file-stamped on Monday, May 2, 2016.

Accordingly, 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.

Therefore, Larson's correctly addressed petition, mailed on April 27, 2016, and file-stamped by the Clerk on May 2, 2016, is untimely, and shall be dismissed.

(R., pp.96-97.)

On appeal, Larson contends "the district court erred in relying on an unpublished Idaho Court of Appeals decision." (Appellant's Brief, p.6.) While it is true that unpublished decisions do not constitute precedent and are not binding except under limited circumstances, it was not erroneous for the district court to rely on a Court of Appeals' decision for guidance. See State v. Mann, 2017 WL 1533655 *4 (Idaho April 28, 2017) (citations, quotations and brackets omitted) ("It is important to observe that the district court acted properly by applying the test adopted by the Court of Appeals All tribunals inferior to the Court of Appeals are obligated to abide by decisions issued by the Court of Appeals."). Larson's claim to the contrary fails.

Larson next asserts that Norman is "distinguishable" and notes that "persuasive authority in other jurisdictions have [sic] 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." (Appellant's Brief, p.6.) As an initial matter, this

Court need not look to “persuasive authority in other jurisdictions” to conclude that the mailbox rule generally applies to incarcerated *pro se* inmates because that principle has already been adopted in Idaho. Munson, supra; Hayes v. State, 143 Idaho 88, 91, 137 P.3d 475, 478 (Ct. App. 2006) (“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.”). Thus, the only question is whether Larson was entitled to application of the mailbox rule in his case. Larson contends he was entitled to the rule notwithstanding Norman because that “was a case in which the notice of appeal was mailed to the prosecutor’s office and not the clerk of the district court.” (Appellant’s Brief, p.9.) It is unclear how this fact from Norman distinguishes it from Larson’s case because, although Larson addressed the mailing to “Bonner County Courthouse,” he used the prosecutor’s address. (R., pp.88, 94.) As a result, Larson, like Norman, mailed his petition “to the prosecutor’s office and not the clerk of the district court.” The primary distinction between Larson’s case and Norman, therefore, appears to be that Larson *thought* he was sending his petition to the district court, but used the wrong

address,¹ whereas Norman only sent his petition to the prosecutor and the Idaho Attorney General.² The district court did not, however, find this distinction meaningful because the error was due to Larson’s failure, not “some other factor, such as the prison mail system.” (R., p.96.) Accordingly, the district court dismissed Larson’s petition as untimely.

¹ Larson asserts that “[p]resumably, such a mistake in address is not uncommon and undoubtedly there is a process to forward county documents to the proper recipient,” as evidenced by the existence of a “COURTHOUSE MAIL” option on the court’s certificate of service. (Appellant’s Brief, p.7.) Larson’s use of the word “presumably” reveals there is no evidence in the record that there is a “process” for forwarding incorrectly addressed mail sent through the United States Postal Service. Larson also suggests the “prosecutor who received such a pleading” had an obligation, “as an officer of the court,” to “take [] steps to ensure it reached the correct destination.” (Appellant’s Brief, p.7 n.3.) There is no evidence that any prosecutor personally “received” the petition Larson intended for the court and discarded it in bad faith, as Larson implies. The more likely scenario is that someone other than a prosecutor opened all incoming mail and processed it accordingly without noticing the addressee on the label. Larson’s implication that there was misconduct is baseless.

² There are two additional differences between Norman and this case. First, Norman “presented no evidence showing when he placed the notice of appeal into the prison mail system,” 2011 WL 11067211 *2, whereas Larson did present such evidence (R., p.88). Second, Norman involved the failure to timely file a notice of appeal, which is generally a jurisdictional defect. State v. Ciccone, 150 Idaho 305, 306, 246 P.3d 958, 959 (2010) (“The timely filing of a notice of appeal is a jurisdictional prerequisite to challenge a decision made by a lower court.”); but see Hayes, 143 Idaho at 91, 137 P.3d at 478 (finding notice of appeal timely under mailbox rule). On the other hand, the time for filing a post-conviction petition may be tolled under certain circumstances. Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009) (citations omitted). Those circumstances are not, however, applicable to Larson’s case. Id. (noting tolling has been recognized “where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials” and “where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction”).

CONCLUSION

This Court may affirm the district court's order summarily dismissing Larson's untimely petition for post-conviction relief.

DATED this 16th day of May, 2017.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of May, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

JML/dd