6-13-2017

Hallquist v. State Appellant's Brief Dckt. 44678

IN THE SUPREME COURT OF THE STATE OF IDAHO

KENNETH HALLQUIST,	)	**NO. 44678**
	)	
Petitioner-Appellant,	)	**ADA COUNTY NO. CV-PC-2016-6194**
	)	
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

BRIEF OF APPELLANT

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

HONORABLE MELISSA MOODY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Kenneth Hallquist appeals from the district court's judgment summarily dismissing his petition for post-conviction relief. He asserts the district court erred by dismissing one of his claims on an improper basis. Due to the improper dismissal, Mr. Hallquist respectfully requests this Court vacate the district court's order with respect to this claim and remand this claim for further proceedings.

Statement of Facts and Course of Proceedings

Mr. Hallquist's pro se petition for post-conviction relief relates to three criminal cases arising out of Ada County, CR-FE-2014-1502, CR-MD-2014-7440, and CR-MD-2013-18118. (R., p.5.) In CR-FE-2014-1502, Mr. Hallquist pled guilty to felony intimidation of a witness and two misdemeanor offenses for violating a no contact order. (R., p.55.) In CR-MD-2014-7440, Mr. Hallquist pled guilty to another misdemeanor offense for violating a no contact order.[1] (R., p.55.) In CR-MD-2013-18118, Mr. Hallquist pled guilty to domestic battery in the presence of a child, also a misdemeanor offense. (R., p.55.) According to Mr. Hallquist's petition, the district court sentenced him to five years, with one year fixed, and retained jurisdiction (a "rider") for all three cases.[2] (R., p.5.) The judgment of conviction was entered July 25, 2014, and

[1] The district court referred to this offense as a felony, but the iCourt Repository indicates the offense was a misdemeanor. *See* Ada County CR-MD-2014-7440, *State v. Hallquist*, *available at* https://mycourts.idaho.gov/. Also to note for the Court, neither clerk's record nor transcripts from any of the underlying criminal cases was added to the record in this case. Mr. Hallquist never moved for judicial notice, and the district court did not take judicial notice sua sponte.

[2] To clarify, Mr. Hallquist received this five-year sentence for felony intimidation of a witness, along with local jail time for the misdemeanors. *See* Ada County CR-FE-2014-1502, *State v. Hallquist*, *available at* https://mycourts.idaho.gov/. For CR-MD-2014-7440 and CR-MD-2013-

the district court held a rider review hearing on February 25, 2015. (R., p.5.) The district court suspended Mr. Hallquist's sentence and placed him on probation. (R., p.5.) Mr. Hallquist then filed an Idaho Criminal Rule 35 ("Rule 35") motion for leniency on May 6, 2015, which the district court denied. (*See* R., p.129 (State's summary dismissal motion).) Mr. Hallquist appealed. (R., p.9.) *See also State v. Hallquist*, No. 43268, 2016 Unpublished Opinion No. 342 (Ct. App. Jan. 26, 2016). The Court of Appeals affirmed the district court's denial of his Rule 35 motion. *Hallquist*, 2016 Unpublished Opinion No. 342.

On March 28, 2016, Mr. Hallquist filed a pro se petition and affidavit for post-conviction relief. (R., pp.5–17.) He also moved for the appointment of counsel. (R., pp.18–20.) Mr. Hallquist raised numerous claims in his petition, including ineffective assistance of counsel, due process violations, and prosecutorial misconduct. (R., pp.6–9, 10.) Among other claims, Mr. Hallquist asserted he was "threatened not to do a preliminary hearing in which my wrongful felony would have been dismissed w[ith] prejudice." (R., p.9.) In his affidavit, Mr. Hallquist further stated the prosecutor "threatened more charges if I didn't waive my preliminary hearing." (R., p.13.) The district court appointed counsel to represent Mr. Hallquist. (R., pp.22–23.)

On April 12, 2016, the State filed an Answer. (R., pp.26–29.) On September 22, 2016, Mr. Hallquist's counsel filed a brief in support of his original petition and requested an evidentiary hearing. (R., pp.58–67.) His counsel did not file an amended petition. (*See* R., p.59.) The State responded by filing a motion for summary dismissal on October 20, 2016. (R., pp.123–40.) With respect to the preliminary hearing waiver claim, the State argued:

18118, iCourt indicates Mr. Hallquist also received local jail time. *See* Ada County CR-MD-2014-7440, CR-MD-2013-18118, *State v. Hallquist*, *available at* https://mycourts.idaho.gov/.

> Petitioner's third stated ground for relief alleges that he was "bullied into taking a plea" and was "threatened not to do a preliminary hearing in which my wrongful felony would have been dismissed w/ prejudice." As noted above, the claim that he was "bullied into taking a plea" is completely inconsistent with his guilty plea advisory form. It is also nothing more than a bare assertion that is unsupported by any facts or evidence that would make a prima facie case as required by the law. As such, for the reasons stated above, this claim should be dismissed.
>
> The same is true of his claim that he was "threatened" into not having a preliminary hearing at which, he claims, his felony would have been dismissed. The claim that the felony would have been dismissed at preliminary hearing is nothing more than a bare assertion unsupported by any facts or evidence. His guilty plea advisory form contradicts his claim that the [sic] was threatened into not having a preliminary hearing and the fact that he provided a factual basis for the felony during his guilty plea further contradicts this claim. This claim too should be dismissed.

(R., p.132.) In Mr. Hallquist's guilty plea advisory form, he had initialed that "[n]o one has made any promises or threats to get me to plead guilty in this action." (R., p.69.)

The district court ordered Mr. Hallquist to file any response by November 30, 2016, and thereafter the district court would take the matter under advisement. (R., p.141.) Mr. Hallquist did not respond. On December 1, 2016, the district court issued an order granting the State's motion for summary dismissal. (R., p.143.) The district court entered a judgment dismissing the case the same day. (R., p.145.) Mr. Hallquist timely appealed. (R., pp.147–49.)

ISSUE

Did the district court err when it dismissed one of Mr. Hallquist's claims for post-conviction relief on an improper basis?

ARGUMENT

The District Court Erred When It Dismissed One Of Mr. Hallquist's Claim For Post-Conviction Relief On An Improper Basis

A petition for post-conviction relief is civil in nature. *State v. Dunlap*, 155 Idaho 345, 361 (2013).

> Like a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*

Charboneau v. State, 144 Idaho 900, 903 (2007).

The district court can summarily dismiss or grant a petition for post-conviction relief if "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." I.C. § 19-4906(b), (c). "Summary dismissal of an application is the procedural equivalent of summary judgment under I.R.C.P. 56." *Takhsilov v. State*, 161 Idaho 669, 672 (2016) (quoting *State v. Yakovac*, 145 Idaho 437, 444 (2008)). "In considering summary dismissal of an application for post-conviction relief, the trial court must accept as true verified allegations of fact in the application or in supporting affidavits, no matter how incredible they may appear, unless they have been disproved by other evidence in the record." *Dunlap v. State*, 126 Idaho 901, 909 (Ct. App. 1995). The district court is "required to accept the petitioner's unrebutted allegations as true, but need not accept the petitioner's conclusions." *Charboneau*, 144 Idaho at 903. Any disputed facts are construed in favor of the non-moving party, and "all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving

party." *Vavold v. State*, 148 Idaho 44, 45 (2009). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002).

If the State moves for summary dismissal pursuant to I.C. § 19-4906(c), "further notice from the court is ordinarily unnecessary." *Mallory v. State*, 159 Idaho 715, 721 (Ct. App. 2015).

> However, if the state's motion fails to give notice of the grounds, the court may grant summary dismissal only if the court first gives the petitioner twenty days' notice of intent to dismiss and the grounds therefore, pursuant to Section 19–4906(b). This procedure is necessary so that the petitioner is afforded an opportunity to respond and to establish a material factual issue.
>
> A motion for summary dismissal that does not identify the particular basis for dismissal of the petitioner's claims fails to give notice of any deficiencies in the evidence or additional legal analysis necessary to avoid dismissal of the action. In such a situation, the court's summary dismissal of the petition is, in effect, a sua sponte dismissal on grounds advanced by the court, and it is obliged to comply with the twenty-day notice requirement in Section 19-4906(b) before dismissing the post-conviction action. Failure to provide notice requires that a judgment denying a petition for post-conviction relief be vacated.

Id. (citations omitted). "On appeal of a summary dismissal of petition for post-conviction relief, appellate courts exercise free review over questions of law." *Muchow v. State*, 142 Idaho 401, 402 (2006).

Here, Mr. Hallquist contends the district court erred by dismissing his preliminary hearing waiver claim. In the State's motion for dismissal, the State argued there were no facts or evidence to support this claim and that Mr. Hallquist's guilty plea form and guilty plea itself disproved the claim. (R., p.132.) Mr. Hallquist asserts these grounds for dismissal were erroneous. Mr. Hallquist's verified petition and affidavit are evidence in support of his claim. *See Dunlap*, 126 Idaho at 909 (the trial court must accept as true verified allegations of fact in petition and affidavit, no matter how "incredible"); *Mata v. State*, 124 Idaho 588, 593 (Ct. App. 1993) ("A verified pleading that sets forth evidentiary facts within the personal knowledge of the

verifying signator is in substance an affidavit, and is accorded the same probative force as an affidavit."); *see also Grant v. State*, 156 Idaho 598, 605 n.4 (Ct. App. 2014) ("We note that verified pleadings, with respect to facts within a petitioner's personal knowledge, are admissible evidence."). Thus, Mr. Hallquist's assertion that he was threatened by the prosecutor to waive the preliminary hearing or face additional charges must be accepted as true. (*See* R., pp.9, 13.) In addition, Mr. Hallquist's guilty plea advisory form does not disprove his claim. The guilty plea advisory form indicates no one threatened Mr. Hallquist to get him to plead guilty. (*See* R., p.69.) This form is silent, however, with respect to threats to waive the preliminary hearing. Even if the form could be construed to extend to threats towards other proceedings, the form highlights a genuine issue of material fact—Mr. Hallquist averred he was threatened by the prosecutor, but his guilty plea form says otherwise. Thus, at most, the evidence for this claim conflicts. Finally, the State's reliance on Mr. Hallquist's proffered factual basis for the felony offense during his guilty plea does not disprove his contention that the felony offense would have been dismissed at the preliminary hearing. Mr. Hallquist's subsequent guilty plea does not guarantee the State would have met its burden at the preliminary hearing. Therefore, the district court should not have granted the State's motion to dismiss this claim on these particular grounds.

CONCLUSION

Mr. Hallquist respectfully requests that this Court vacate the district court's order with respect to this claim and remand this claim for further proceedings.

DATED this 13th day of June, 2017.

/s/
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, as follows:

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