

7-31-2017

## Hallquist v. State Respondent's Brief Dckt. 44678

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"Hallquist v. State Respondent's Brief Dckt. 44678" (2017). *Not Reported*. 3746.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3746](https://digitalcommons.law.uidaho.edu/not_reported/3746)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

KENNETH HALLQUIST,	)	
	)	No. 44678
Petitioner-Appellant,	)	
	)	Ada County Case No.
v.	)	CV-PC-2016-6194
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

---

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 MELISSA MOODY  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

JENNY C. SWINFORD  
Deputy State Appellate Public Defender  
322 E. Front St., Ste. 570  
Boise, Idaho 83702  
(208) 334-2712

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

RUSSELL J. SPENCER  
Deputy Attorney General  
Criminal Law Division  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

ATTORNEYS FOR  
DEFENDANT-RESPONDENT

ATTORNEY FOR  
PETITIONER-APPELLANT

# TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	3
ARGUMENT .....	4
Hallquist Has Failed To Show Error In The District Court’s Summary Dismissal Of His Petition For Post-Conviction Relief.....	4
A.    Introduction .....	4
B.    Standard Of Review.....	4
C.    Hallquist Is Not Entitled To Post-Conviction Relief .....	4
CONCLUSION .....	8
CERTIFICATE OF SERVICE .....	8

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Aragon v. State</u> , 114 Idaho 758, 760 P.2d 1174 (1988) .....	6
<u>Baldwin v. State</u> , 145 Idaho 148, 177 P.3d 362 (2008) .....	6
<u>Ferrier v. State</u> , 135 Idaho 797, 25 P.3d 110 (2001) .....	5
<u>Gilpin-Grubb v. State</u> , 138 Idaho 76, 57 P.3d 787 (2002) .....	4
<u>Goodwin v. State</u> , 138 Idaho 269, 61 P.3d 626 (Ct. App. 2002).....	5
<u>Monahan v. State</u> , 145 Idaho 872, 187 P.3d 1247 (Ct. App. 2008).....	5
<u>Pizzuto v. State</u> , 146 Idaho 720, 202 P.3d 642 (2008) .....	4
<u>Pratt v. State</u> , 134 Idaho 581, 6 P.3d 831 (2000) .....	5
<u>State v. Bearshield</u> , 104 Idaho 676, 662 P.2d 548 (1983).....	4
<u>State v. Book</u> , 127 Idaho 352, 900 P.2d 1363 (1995) .....	7
<u>State v. Hallquist</u> , Docket No. 43268, 2016 Unpublished Op. No. 342 (Idaho App., Jan. 26, 2016) .....	1
<u>State v. Kelchner</u> , 130 Idaho 37, 936 P.2d 680 (1997).....	7
<u>State v. Lovelace</u> , 140 Idaho 53, 90 P.3d 278 (2003) .....	5
<u>State v. Mosqueda</u> , 123 Idaho 858, 853 P.2d 603 (Ct. App. 1993) .....	1
<u>State v. Payne</u> , 146 Idaho 548, 199 P.3d 123 (2008) .....	5
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	6, 8
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007) .....	4, 5, 6

**STATUTES**

**PAGE**

I.C. § 19-4901 ..... 4

I.C. § 19-4902 ..... 1

I.C. § 19-4903 ..... 5

I.C. § 19-4906 ..... 5

## STATEMENT OF THE CASE

### Nature Of The Case

Kenneth Hallquist appeals from the district court's order summarily dismissing his petition for post-conviction relief. On appeal, he contends that the district court erred when it dismissed his claim that he was coerced into waiving the preliminary hearing.

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

In 2014, Hallquist pleaded guilty to felony intimidating a witness and two counts of violation of a no-contact order. (R., pp.6, 69-70.) On July 25, 2014, the district court entered judgment against Hallquist and imposed a unified sentence of five years with one year fixed on the witness intimidation charge, and retained jurisdiction. (R., p.5.) Hallquist never filed an appeal from that judgment.<sup>1</sup> The judgment therefore became final on September 5, 2014. Following the period of retained jurisdiction, the district court placed Hallquist on probation. (Id.) Hallquist filed a Rule 35 motion for leniency, which the district court denied. See State v. Hallquist, Docket No. 43268, 2016 Unpublished Op. No. 342 (Idaho App., Jan. 26, 2016). Hallquist appealed that denial, and the Court of Appeals affirmed the district court. Id.

More than a year and a half after judgment became final in his criminal case, on March 28, 2016, Hallquist filed his petition for post-conviction relief.<sup>2</sup> (R., pp.5-17.) In

---

<sup>1</sup> While Hallquist did file a Rule 35 motion and appeal from the district court's subsequent denial of that motion, that appeal cannot serve as an appeal from the judgment. State v. Mosqueda, 123 Idaho 858, 859, 853 P.2d 603, 604 (Ct. App. 1993).

<sup>2</sup> Clearly Hallquist's petition for post-conviction relief, as it related to challenges to his judgment of conviction, was not timely. See I.C. § 19-4902 ("An application may be filed at any time within one (1) year from the expiration of the time for appeal..."). However,

his petition, he alleged that he was entitled to relief based on various claims of ineffective assistance of counsel and prosecutorial misconduct. (R., pp.6-16.) The state filed a motion to dismiss Hallquist's petition for post-conviction relief on the grounds that he had failed to support his bare and conclusory claims with admissible evidence and some of those claims were otherwise disproved by the record. (R., pp.123-40.) The district court granted the state's motion. (R., pp.143-45.) Hallquist filed a timely notice of appeal. (R., pp.147-49.)

---

as the statute of limitations issue does not appear to have been raised below, the state will not address it further in this appeal.

## ISSUE

Hallquist states the issue on appeal as:

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

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Hallquist failed to show that the district court erred when it granted the state's motion for summary dismissal of his petition for post-conviction relief?



## ARGUMENT

### Hallquist Has Failed To Show Error In The District Court's Summary Dismissal Of His Petition For Post-Conviction Relief

#### A. Introduction

On appeal, Hallquist asserts that by granting the state's motion for summary dismissal, the district court dismissed on an erroneous basis his claim that he was coerced into waiving the preliminary hearing through threats. (Appellant's brief, pp.5-7.) Application of the correct legal standards to Hallquist's petition, however, shows no error in the district court's summary dismissal.

#### B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of 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. Hallquist Is Not Entitled To Post-Conviction Relief

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman, 144 Idaho at 522, 164 P.3d at 802; State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). Generally, the Idaho Rules of Civil Procedure apply to petitions for post-conviction relief. Pizzuto v. State, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, unlike other civil

complaints, in post-conviction cases the “application must contain much more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).” Monahan v. State, 145 Idaho 872, 875, 187 P.3d 1247, 1250 (Ct. App. 2008) (quoting Goodwin v. State, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002)). Instead, the application must be supported by a statement that “specifically set[s] forth the grounds upon which the application is based.” Id. (citing I.C. § 19-4903). “The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing I.C. § 19-4903).

Idaho Code § 19-4906(c) authorizes summary dismissal of an application for post-conviction relief in response to a party’s motion. “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)). Thus, a claim for post-conviction relief is subject to summary dismissal “if the applicant’s evidence raises no genuine issue of material fact” as to each element of the petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). “Allegations contained in the application are insufficient for the granting of relief when

(1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

Hallquist raised his claims regarding his waiver of the preliminary hearing, at least in part, as ineffective assistance of counsel claims. (See R., pp.10, 13.) Where the petitioner alleges entitlement to relief based on ineffective assistance of counsel, he must show that his attorney’s performance was objectively deficient and that he was prejudiced by that deficiency. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Aragon v. State, 114 Idaho 758, 760-61, 760 P.2d 1174, 1176-77 (1988). To establish deficient performance, the petitioner must overcome the strong presumption that counsel’s performance was adequate and “show that his attorney’s conduct fell below an objective standard of reasonableness.” Baldwin v. State, 145 Idaho 148, 154, 177 P.3d 362, 368 (2008) (citations omitted). To establish prejudice, the petitioner must show “a reasonable probability that but for his attorney’s deficient performance the outcome of the proceeding would have been different.” Id.

The state moved to dismiss Hallquist’s claims relating to the waiver of the preliminary hearing and entry of his guilty plea on the bases that they were bare and conclusory and disproved by the record. (R., p.132.) Hallquist asserted that he waived the preliminary hearing and pleaded guilty due to the threat of the state bringing additional charges. (See R., pp.9, 13, 62-63.) This assertion was belied by his guilty plea advisory form, in which Hallquist specifically represented: “No one has made any promises or threats to get me to plead guilty in this action.” (R., p.69.) The guilty plea advisory form also set forth the additional charges Hallquist avoided by waiving the preliminary hearing and pleading guilty: an unspecified number of “additional VNCOs

based on facts in the instant case” and “charges in connection with a Valentine’s day card [defendant] allegedly requested to be sent by a third party.” (R., p.70.) The state’s agreement to forego filing additional charges (which Hallquist never claimed were unsupported) in consideration for a defendant’s waiver of the preliminary hearing and guilty plea does not render that waiver and plea involuntary. Finally, Hallquist asserted that if he had had the preliminary hearing, he would have been able to get his felony charge dismissed with prejudice. (R., p.9.) This assertion is pure speculation unsupported by any evidence.

On appeal, Hallquist narrows the issue from alleged threats coercing his decisions to waive the preliminary hearing and plead guilty to only the issue of his waiver of the preliminary hearing. (Appellant’s brief, pp.5-7.) Hallquist notes that while his guilty plea advisory form may demonstrate that his *guilty plea* was not coerced by threats, it does not show that his waiver of the *preliminary hearing* was not coerced. (Id., p.7.) But a valid guilty plea waives all non-jurisdictional defects and defenses, whether constitutional or statutory, in prior proceedings. State v. Kelchner, 130 Idaho 37, 39, 936 P.2d 680, 682 (1997); State v. Book, 127 Idaho 352, 354, 900 P.2d 1363, 1365 (1995). Even had the prosecutor and defense attorney coerced Hallquist into waiving the preliminary hearing by threatening him with the filing of additional charges (which, again, Hallquist never argued were unsupported), any challenge to this alleged error in the proceedings was waived by Hallquist’s subsequent valid guilty plea. Unless Hallquist is also challenging the validity of his guilty plea, Hallquist’s claim regarding his waiver of the preliminary hearing does not justify relief as a matter of law, and the district court correctly dismissed it.

On his ineffective assistance of counsel claims, Hallquist failed to present sufficient evidence to support either prong of the Strickland standard. He failed to show any grounds for relief based on his waiver of the preliminary hearing, and the district court correctly granted the state's motion for summary dismissal on this basis. Hallquist has failed to show error in the district court's dismissal of his post-conviction petition. The district court should therefore be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order granting the state's motion for summary dismissal.

DATED this 31st day of July, 2017.

/s/ Russell J. Spencer  
RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of July, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Russell J. Spencer  
RUSSELL J. SPENCER  
Deputy Attorney General

RJS/dd