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## Edmo v. State Respondent's Brief Dckt. 44720

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

ALEXANDER CHRISTOPHER EDMO, )  
 )  
 Petitioner-Appellant, ) No. 44720  
 )  
 v. ) Bannock County Case No.  
 ) CV-2016-2936-PC  
 )  
 STATE OF IDAHO, )  
 )  
 Defendant-Respondent. )  
 )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BANNOCK**

\_\_\_\_\_  
**HONORABLE DAVID C. NYE**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Alexander Christopher Edmo appeals from the district court's summary dismissal of his successive petition for post-conviction relief.

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

In its order summarily dismissing Edmo's initial petition for post-conviction relief, the district court set forth the factual background of the underlying case:

On February 28, 2012, police officers descended on the residence of Dolores Y. Gonzalez upon information that Gonzalez, who was on felony probation, was in possession of methamphetamine. After questioning Gonzalez, the officers performed a pat-down search of Edmo, who was also present at the residence, and discovered two clear plastic baggies in his shirt pocket. According to Officer Jones's police report, the baggies contained a white crystalline substance and straws commonly used for snorting drugs. The report also states that a field test of the white substance in the two baggies returned a presumptively positive result when tested for methamphetamine. The evidence was then sent to the state testing lab where it was eventually determined that the baggies contained methamphetamine.

(R., p.96.) The state charged Edmo with possession of methamphetamine and a persistent violator enhancement. (Id.) Edmo pleaded guilty to the possession charge and the state dismissed the enhancement. (R., pp.4, 49-59, 96.) The district court sentenced Edmo to a unified term of six years with three years fixed. (R., pp.4, 96.) Following sentencing, Edmo filed an appeal, a Rule 35 motion, and a motion to withdraw his guilty plea—all of which were denied. (R., p.128.)

On December 22, 2014, Edmo filed his first petition for post-conviction relief. (R., pp.127-28.) That petition was summarily dismissed on August 26, 2015. (Id.) Edmo

appealed, but that appeal was dismissed, with remittitur entering on December 24, 2015. (R., p.146.) The following year, on August 19, 2016, Edmo filed a successive petition for post-conviction relief. (R., pp.4-12.) The state filed a motion for summary dismissal on the grounds that the petition was untimely and was a successive petition not permitted under the applicable statute. (R., pp.81-93.) The district court granted the state's motion to dismiss Edmo's successive petition on the basis that Edmo had failed to show a sufficient reason for filing a successive petition. (R., pp.127-34.) Edmo filed a motion to alter or amend the judgment (R., pp.136-44), which was also denied by the district court (R., pp.147-48). Edmo appealed. (R., pp.150-53.)

## ISSUES

Edmo states the issues on appeal as:

I. Should the district court's decision to deny Edmo's motion for leave to file a successive petition for PCR be reversed because the motion, points of authority, exhibits and affidavit satisfied the statutory requirements of I.C. § 19-4908?

II. Was it error for the Court to grant Respondent summary judgment, on it's [sic] own burden under I.C. § 19-4908, to determine if a motion for leave to file a successive petition for post-conviction relief should be granted[?]

(Appellant's brief, p.6.)

The state consolidates and rephrases the issue as:

Has Edmo failed to show that the district court erred when it dismissed his successive petition for post-conviction relief?

## ARGUMENT

### Edmo Has Failed To Show That The District Court Erred When It Dismissed His Successive Petition For Post-Conviction Relief

#### A. Introduction

Below, Edmo filed a successive petition for post-conviction relief in which he alleged that his trial counsel was ineffective for advising him to plead guilty in his underlying criminal case, that there were legal arguments he believed he could have raised, and that he was actually innocent. (R., pp.4-22.) The state filed a motion for summary dismissal (R., pp.81-93) and the district court summarily dismissed the successive petition on the basis that Edmo had failed to show sufficient reason to file a successive petition, and the claims in the successive petition were litigated in Edmo's initial petition (R., pp.83-101). On appeal, Edmo argues that the district court erred by summarily dismissing his successive petition for post-conviction relief. (Appellant's brief, pp.7-23.) Application of the correct legal standards to Edmo's successive 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. Edmo 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 unrebutted 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.

The state sought summary dismissal of Edmo’s successive petition on the grounds, *inter alia*, that his claims were or should have been previously litigated, and that he failed to show sufficient cause to file a successive petition. (R., pp.89-93.) The district court granted the state’s motion on these grounds, concluding that the lack of appointed counsel for Edmo’s initial post-conviction petition was not a sufficient reason for filing a successive petition, and that the claims raised in his successive petition were the same as those already dismissed in Edmo’s initial petition. (R., pp.129-31.)

Under Idaho Code § 19-4908, all claims must be raised in the initial post-conviction petition, and a petitioner must show a sufficient reason for filing a successive petition or that petition will be dismissed. Moreover, a successive petition for post-conviction relief may be summarily dismissed if the grounds for relief were finally adjudicated or waived in the previous post-conviction proceeding. Griffin v. State, 142 Idaho 438, 441-42, 128 P.3d 975, 978-79 (Ct. App. 2006). And, under Idaho Code

§ 19-4908, “[a]ny grounds for relief not raised [in the initial petition] are permanently waived if the grounds were known or should have been known at the time of the first petition.” Stuart v. State, 118 Idaho 932, 933-34, 801 P.2d 1283, 1284-85 (1990). Because Edmo failed to show a sufficient reason entitling him to bring his previously litigated or otherwise waived claims in a successive petition, the district court correctly dismissed the successive petition.

On appeal, Edmo argues that he presented a sufficient reason for filing a successive petition because, he alleges, he was deprived of meaningful access to the courts when the district court denied his appointment for counsel on his initial petition. (Appellant’s brief, pp.7-18.) This argument fails. First, as is demonstrated by Edmo’s recitation of procedural history, he in fact had access to the courts: he was provided with the IDOC legal packet; he filed a petition for post-conviction relief; he appealed from the dismissal of that petition. (See Appellant’s brief, pp.2-3.) Second, as the district court recognized, the denial of appointed counsel to pursue post-conviction relief is not generally an issue for subsequent post-conviction relief. (R., pp.130-31.) And third, while the district court recognized that the denial of counsel to pursue post-conviction relief is necessarily a claim which cannot be raised in an original petition for post-conviction relief, the state notes that this claim could have been raised on appeal from the dismissal of the initial petition and so would still be barred in any successive action. See I.C. § 19-4901(b) (any “issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings”); Rodgers v. State, 129 Idaho 720, 725, 932 P.2d 348, 353 (1997) (“An application for post-conviction relief is not a substitute for an appeal.”). Under any

theory, Edmo failed to show a sufficient reason for bringing a successive petition for post-conviction relief.

Edmo also asserts that the district court erred by dismissing his petition on a different ground than that articulated by the state in its motion for summary dismissal: He asserts that the district court dismissed the petition for post-conviction relief because it was a successive petition not permitted by Idaho Code § 19-4908, while the state sought dismissal pursuant to Idaho Code § 19-4906(c). (Appellant's brief, pp.18-22.) This argument also fails. Idaho Code § 19-4906(c) is the statute that controls summary judgment pursuant to a party's motion. One of the grounds for the state's motion was that Edmo's petition was a successive petition not permitted under Idaho Code § 19-4908. (R., pp.88, 90-93.) The district court could, therefore, properly grant the state's motion on this basis.

Finally, Edmo argues that his petition was not untimely, and thus barred, under Idaho Code § 19-4902. (Appellant's brief, pp.22-23.) While the state did move for summary dismissal on the basis that Edmo's successive petition was not timely (R., pp.89-90), the district court did not grant summary dismissal on this ground, concluding that the bar against successive petitions was sufficient (R., p.131). Edmo's assertions, therefore, are irrelevant and do not challenge the basis for the district court's order summarily dismissing his successive petition.

The district court correctly dismissed Edmo's successive petition for post-conviction relief because Edmo failed to provide a sufficient reason to file a successive petition and otherwise used his successive petition to rehash claims from his initial

petition. Edmo has failed to show error in the court's dismissal. The district court's order summarily dismissing the successive petition should therefore be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Edmo's successive petition for post-conviction relief.

DATED this 7th day of June, 2017.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of June, 2017, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

ALEXANDER CHRISTOPHER EDMO  
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/s/ Russell J. Spencer  
RUSSELL J. SPENCER  
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RJS/dd