1-2-2014

Grant v. State Appellant's Reply Brief Dckt. 39207

IN THE SUPREME COURT OF THE STATE OF IDAHO

WOODROW JOHN GRANT,	)	
	)	
Petitioner-Appellant,	)	NO. 39207
	)	
v.	)	BANNOCK COUNTY NO. CV 2011-759
	)	
STATE OF IDAHO ,	)	REPLY BRIEF
	)	
Respondent.	)	
	)	

REPLY BRIEF OF APPELLANT

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

HONORABLE ROBERT C. NAFTZ
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Woodrow Grant appeals, claiming that, given the United States Supreme Court's recent opinions in *Trevino v. Thaler*, 133 S. Ct. 1911, 1918 (2013), and *Martinez v. Ryan*, 132 S. Ct. 1309, 1315 (2012), the district court's decision to deny his request to appoint post-conviction counsel violated his constitutional right to due process. The State responds that those decisions are distinguishable on two bases – Idaho does not *require* ineffective assistance claims to be brought in post-conviction, and the cases were ultimately decided on federal law. The State's first argument was rejected in *Trevino*. The State's second argument is also meritless because the Supreme Court was only recognizing a remedy in federal *habeas* law when no attorney is appointed to assist a petitioner during his initial challenge to the effectiveness of trial counsel. The Supreme Court's discussion of the underlying problem – the deprivation of counsel during those "initial-review collateral proceedings" – is directly applicable to Mr. Grant's arguments on appeal, since that is the error of which he complains. Idaho's appellate courts should take this opportunity to answer the question left open by the Supreme Court's decisions and decide whether there is a due process right to counsel in initial-review collateral proceedings, or whether Idaho will procedurally default those claims without appointing counsel and allow the federal courts to decide these claims on their merits instead.

Alternatively, Mr. Grant argued that the district court erred in denying his request for counsel based on Idaho's statutory provisions. The State's only responses to this alternative argument, is that Mr. Grant did not support his claims with admissible

evidence or that his allegations were refuted by other evidence in the record. The State's first argument is meritless, since Mr. Grant submitted verified and notarized assertions of fact, which are admissible as evidence. The State's second argument is similarly baseless since Mr. Grant is entitled to the appointment of counsel if his allegations present the possibility of a valid claim. Mr. Grant's verified allegations meet that standard. Therefore, the decision to not appoint counsel was erroneous.

The State made similar responses to Mr. Grant's alternative argument that the district court erroneously summarily dismissed his petition for relief. The State's responses are unavailing in that context. If there is a genuine issue of material fact, an evidentiary hearing is necessary. The existence of evidence tending to contradict Mr. Grant's verified allegations of fact only creates a genuine issue of material fact. Thus, the district court's decision to summarily dismiss the petition for relief was in error.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Grant's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Whether the district court erred when it declined to appoint counsel in Mr. Grant's post-conviction action, even though he had made the necessary showing to merit appointment of counsel.

2. Whether the district court erred when it summarily dismissed Mr. Grant's petition for post-conviction relief without properly considering the undisputed factual allegations he made in his verified petition and affidavit in support of that petition.

ARGUMENT

I.

The District Court Erred When It Declined To Appoint Counsel In Mr. Grant's Post-Conviction Action, Even Though He Had Made The Necessary Showing To Merit Appointment Of Counsel

A. Idaho Should Recognize A Constitutional Right To Counsel In Initial-Review Collateral Challenges To The Effectiveness Of Trial Counsel

Mr. Grant contends that he has a due process right to counsel in the initial-review collateral proceeding, which in Idaho, is the post-conviction process, since he has presented a "substantial claim" based on ineffective assistance of trial counsel. *Martinez*, 132 S. Ct. at 1315; *see also Trevino*, 133 S. Ct. at 1918 (extending the scope of *Martinez*). The State responds that "Idaho does not categorically bar defendants from raising ineffective assistance of counsel claims on direct appeal," and further, that *Martinez* is inapplicable because it was ultimately decided on a question of federal *habeas* law. (Resp. Br., pp.7-8.) The State's first argument is meritless in light of United States Supreme Court precedent, and its second argument ignores the fact that the Supreme Court only identified a remedy for the deprivation of counsel in cases such as this; the discussion of the underlying problem – the problem with depriving an indigent person of the assistance of counsel during initial-review collateral proceedings – is directly applicable here.

1. The United States Supreme Court Has Already Rejected The State's First Argument; The *Martinez* Rule Is Clearly Applicable To Idaho

The State argued that, since Idaho does not "categorically bar" claims of ineffective assistance of counsel from being raised on direct appeal, the decision in

Martinez is inapplicable in Idaho. The State apparently fails to recognize that its contention has already been rejected by the United States Supreme Court: "a distinction between (1) a State that denies permission to raise the claim on direct appeal and (2) a State that in theory grants permission but, as a matter of procedural design and systematic operation, denies a meaningful opportunity to do so is a distinction without difference." *Trevino*, 133 S. Ct. at 1921. Since the design of Idaho's post-conviction system falls into the second category of states, the State's argument – that, since Idaho does not "categorically bar" claims of ineffective assistance of counsel from being raised on direct appeal, *Martinez* inapplicable to Idaho – has already been rejected by the United States Supreme Court.

In *Trevino*, the Supreme Court considered the effect of the Texas post conviction procedures on the decision of whether to pursue claims of ineffective assistance of trial counsel on direct appeal or in post-conviction. The Supreme Court noted that the Texas Courts had strongly suggested that ineffective-assistance-of-counsel claims should be brought in post conviction, and not on direct appeal. *Id.* at 1919-20 ("'As a general rule' the defendant 'should *not* raise an issue of ineffective assistance of counsel on direct appeal,' but rather in collateral review proceedings.") (quoting *Mata v. State*, 226 S.W.3d 425, 430 n.13 (Tex. 2007)) (emphasis in original). Idaho's appellate courts have issued similar statements. For example, the Idaho Supreme Court has noted that "a petition for post-conviction relief is the preferred forum for bringing claims of ineffective assistance of counsel." *Matthews v. State*, 122 Idaho 801, 806 (1992). The Court of Appeals explained further:

> The presentation of Saxton's ineffective assistance claims [on direct appeal] compels this Court to once again reiterate that it is usually

> inappropriate to raise such an issue on a direct appeal from the judgment of conviction. This is so because claims of ineffective assistance regularly raise issues on which no evidence was presented at the defendant's trial. . . . **the trial record on direct appeal is rarely adequate for review of such claims**.

State v. Saxton, 133 Idaho 546, 549 (Ct. App. 1999) (emphasis added). The Idaho Supreme Court has reaffirmed this admonition to not bring ineffective assistance claims on direct appeal, and indicated that doing so can have severe consequences for the defendant who does not heed the warning. *See State v. Yakovac*, 145 Idaho 437, 443 (2008) (noting that, if a defendant pursues a claim of ineffective assistance in the direct appeal, he cannot then bring the same claim in post-conviction). Therefore, "as a matter of its structure, design, and operation," Idaho's judicial system "does not offer most defendants a meaningful opportunity to present a claim of ineffective assistance of trail counsel on direct appeal." *Trevino*, 133 S. Ct. at 1921. In fact, the federal magistrate courts for the district of Idaho have already decided as much. *See, e.g., Gable v. Wengler*, 2013 WL 4097711, p.8 (D. Idaho August 13, 2013) (unpublished opinion); *Tellez-Vasquez v. Smith*, 2013 WL 4039462, p.3 (D. Idaho August 7, 2013) (unpublished opinion).

Like Texas, while there is a theoretical possibility that a claim of ineffective assistance can be raised in a direct appeal in Idaho, it is certainly not meaningful or practical to do so. Therefore, the rule from *Martinez*, as well as the underlying rationales, are applicable to the need for counsel in post-conviction challenges to the effectiveness of trial counsel in Idaho. *See Trevino*, 133 S. Ct. at 1921.

2. *Martinez* Only Determined That There Is A Separate Remedy In Federal Courts When States Deny Counsel In Initial-Review Collateral Proceedings; The Reasoning Underlying The *Martinez* Decision Is Directly Applicable To The Issue On Appeal In This Case

The State's other argument – that *Martinez* is inapplicable to this case because the error was resolved by a remedy in federal *habeas* law – fails because *Martinez* only prescribed a remedy to an identified error. *See Martinez*, 132 S. Ct. at 1319-20. The error identified was the deprivation of counsel during the initial challenge to the effectiveness of trial counsel. Although the Supreme Court did not reach the question of whether there is a constitutional right to counsel, its discussion on that point is directly applicable to the issue before this Court.

The *Martinez* decision began by recognizing that there is a violation of the petitioner's Fourteenth Amendment rights when he is left without the assistance of counsel during his "one and only appeal." *Id.* at 1315 (citing *Douglas v. California*, 372 U.S. 353 (1963)). It also determined that there were several similarities between the direct appeal and a collateral challenge to the effectiveness of trial counsel, and so, reaffirmed its determination that there may be "an exception to the constitutional rule that there is no right to counsel in collateral proceedings" when there is a challenge to the effectiveness of trial counsel. *Id.* (quoting *Coleman v. Thompson*, 501 U.S. 722, 755-56 (1991)). While it did not directly answer the question of whether such an exception exists, the United States Supreme Court nevertheless decided that, because the assistance of counsel is one of the "bedrock principles" of the judicial system, if the States are going to procedurally default collateral claims against the effectiveness of trial counsel without affording the petitioner the assistance of counsel, the federal courts would be empowered to consider the merits of those claims instead. *Id.* at 317-20.

The State's argument in this case focuses only on the fact that the remedy identified by the Supreme Court is available in the federal courts, not the state courts. (*See generally* Resp. Br., pp.7-8.) That position ignores the Supreme Court's analysis on the underlying error, which is just as critical as the mechanism the Supreme Court used to address that error. That is an error that not only exists in this case, but for which this Court can offer independent relief. Therefore, the decision in *Martinez*, particularly as it relates to the question of whether indigent petitioners need the assistance of counsel during the initial-review collateral proceedings challenging the effectiveness of trial counsel, is applicable to this case. As such, Idaho should decide whether it will recognize a due process right to counsel in initial-review collateral, or whether it will procedurally default claims in post-conviction without appointing counsel and allow the federal courts to decide them on their merits instead.

The Supreme Court explained its reasoning for allowing such an extreme remedy: "'defendants pursuing first-tier review . . . are generally ill equipped to represent themselves. . . .'" *Martinez*, 132 S. Ct. at 1317 (quoting *Halbert v. Michigan*, 545 U.S. 605, 617 (2005)). The Supreme Court also pointed out, "[w]ithout the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. . . . To present a claim of ineffective assistance at trial in accordance with the State procedures, then, a prisoner likely needs an effective attorney." *Id.* Therefore, the Supreme Court determined that, "the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a

substantial claim."[1] *Martinez*, 132 S. Ct. at 1318. In reaching that conclusion, the United States Supreme Court made several observations which speak directly to the issue in this case.

First, the Supreme Court reaffirmed the promise from *Gideon*:

> The right to the effective assistance of counsel is a bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Indeed, the right to counsel is the foundation of our adversary system.

Martinez, 132 S. Ct. at 1317 (quoting *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)). Second, it pointed out that the decision to remove ineffective assistance claims to a collateral attack, while understandable and permissible, does have consequences because of this fundamental principle: "By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." *Id.* at 1318. The logical conclusion is that the constitutional protection cannot be avoided by the procedural expedient of requiring the claim to be brought by a different process. *Compare Brown v. Ohio*, 432 U.S. 161, 169 (1977) (not allowing the

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[1] By stating that the proceedings would "not have been sufficient" to present and prosecute the claim, the Supreme Court has impliedly invoked the principles of due process. Due process requires that a person have notice and an opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 348-49 (1976); *Bradbury v. Idaho Judicial Counsel*, 136 Idaho 63, 72 (2001). That opportunity to be heard must be meaningful in time, as well as in manner. *Lassiter v. Dep't of Soc. Serv. of Durham Cty*, 452 U.S. 18, 24-25 (1981); *Telford v. Nye*, 154 Idaho 606, 612 (2013). If the opportunity to be heard on the claim is insufficient, it is not meaningful in manner, and therefore, violates the constitutional protection of due process. In this regard, Mr. Grant stated that, without post-conviction counsel, "[i]t is almost impossible for him to present evidence in a form acceptable to this Court . . . ." (R., p.59.) Therefore, he requested counsel so that his evidence "can be presented to this Court in a proper and meaningful manner." (R., p.59.) As a result, the issue in this case is of constitutional proportions.

State to circumvent a constitutional protection (double jeopardy) by a mere procedural mechanism (charging two crimes instead of one based on meaningless distinctions)).

The Supreme Court also recognized the petitioner – particularly, the imprisoned petitioner – is set up to have his potentially-meritorious claims procedurally defaulted by the State without having the aid of counsel in the State proceedings. *Id.* Therefore, the Supreme Court determined that petitioners in that position – having substantial claims of trial ineffectiveness procedurally defaulted without having the assistance of counsel – would have a remedy through a federal *habeas* claim.[2] *Id.* As such, the United States Supreme Court gave the states this choice: "elect between appointing counsel in initial-review collateral proceedings or not asserting a procedural default and raising a defense on the merits in federal habeas proceedings." *Id.* at 1320. Mr. Grant is asking this Court to answer the choice left to the states by the Supreme Court and determine that there is a right to counsel in these initial-review collateral proceedings. As the question regarding the need for assistance of counsel in initial-review collateral proceedings was central to the Supreme Court's decision in *Martinez*, its discussion of that issue is highly relevant to the issue now on appeal.

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[2] According to the Supreme Court, a "substantial" claim, is one that the prisoner "must demonstrate that the claim has some merit." *Martinez*, 132 S. Ct. at 1318-19. That standard requires the petitioner to "'sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983))). As the record shows that the issues presented were, at least, adequate to deserve further proceedings, Mr. Grant has demonstrated that his claim is a substantial one. (*See* App. Br., pp.15-38.)

Other courts are already taking the initiative on this issue and are incorporating the Supreme Court's rationale into their state procedures. *See, e.g., Commonwealth v. Holmes*, ___ A.3d ___, 2013 WL 5827027, pp.20-21 (Pa. 2013); *State v. Quixal*, 70 A.3d 749, 754-55 (N.J. Super. Ct. App. Div. 2013). According to the Pennsylvania Supreme Court, "[*Martinez*] does establish a new federal *habeas corpus* consequence that jeopardizes both a Pennsylvania procedural default rule and the State's power and right to pass upon constitutional claims in the first instance. In short, this new equitable rule in practice can be just as coercive as the recognition of a new right. . . ." *Holmes*, ___ A.3d ___, 2013 WL 5827027, p.20. Therefore, it concluded:

> [I]f the federal courts deem Pennsylvania to be the equivalent of Arizona or Texas in its treatment of claims of trial counsel ineffectiveness on direct appeal, federal courts sitting in *habeas corpus* review of final Pennsylvania convictions may elect not to respect our "one full counseled appeal, one full counseled PCRA review" paradigm, at least as to claims of trial counsel ineffectiveness not raised by PCRA counsel, and may review such new claims on the merits, in the first instance, as an "equitable" matter.

Id. at 20-21. As such, the Pennsylvania Supreme Court took the opportunity to explain how the concerns identified in *Martinez* were addressed in its current state system, specifically noting that there was a rule-based right to counsel on initial PCRA petitions in Pennsylvania. *Id.* at 20; *compare Hall v. State*, ___ P.3d ___, 2013 WL 6225673, pp.3-5 (Idaho 2013) (finding that a capital case petitioner, who has a rule-based right to counsel in post-conviction proceedings, also has a right to effective assistance of counsel as assessed under the Sixth Amendment's framework).[3]

[3] The decision in *Hall* was made pursuant to Idaho's current system, which does not recognize a constitutional right to post-conviction counsel. *See Hall*, ___ P.3d ___, 2013 WL 6225673, pp.3-4. However, it does not appear that framework was challenged

Similarly, the New Jersey Superior Court, upon examining *Martinez*, recognized as follows: "Although choosing not to decide the issue, the United States Supreme Court explained the rationale for finding a constitutional right to counsel in 'initial-review collateral proceedings. . . .'" *Quixal*, 70 A.3d at 754. As a result, the New Jersey court determined there was "a State constitutional right to counsel when raising ineffective assistance of trial counsel for the first time, whether raised on direct appeal or by way of PCR." *Id.* at 756. Not doing, so, the New Jersey court concluded, "would create the opportunity for an excusable procedural defect, permitting the late filing of a habeas petition, whenever defendant was not represented and counsel was not properly waived." *Id.* at 756 n.7.

Idaho, too, should answer the Supreme Court's question and decide whether there is a due process right to counsel in initial-review collateral,[4] or whether Idaho will

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in that case. *See generally id* extent of the right to counsel, specifically, whether such counsel had to be conflict-free. *See id.*

[3] Given the Supreme Court's framing of this question as "an exception to the constitutional rule that there is no right to counsel in collateral proceedings," in the context of the petitioner's challenge to the effectiveness of trial counsel, *see Martinez*, 132 U.S. at 1315-17; *Coleman*, 501 U.S. at 755, this Court could limit the scope of such a rule to cases where the petitioner is alleging ineffective assistance of counsel. *Compare State v. Shackelford*, 2013 Opinion No. 107, pp.9-10 (2013) (deciding that the Supreme Court's decision recognizing the right to confrontation did not explicitly extend beyond the trial phase).

. Rather, the Idaho Supreme Court was assessing the extent of the right to counsel, specifically, whether such counsel had to be conflict-free. *See id.*

[4] Given the Supreme Court's framing of this question as "an exception to the constitutional rule that there is no right to counsel in collateral proceedings," in the context of the petitioner's challenge to the effectiveness of trial counsel, *see Martinez*, 132 U.S. at 1315-17; *Coleman*, 501 U.S. at 755, this Court could limit the scope of such a rule to cases where the petitioner is alleging ineffective assistance of counsel. *Compare State v. Shackelford*, 2013 Opinion No. 107, pp.9-10 (2013) (deciding that the Supreme Court's decision recognizing the right to confrontation did not explicitly extend beyond the trial phase).

procedurally default those claims and allow the federal courts to decide them on their merits instead. The federal magistrate courts in the District of Idaho have already recognized that Idaho's post-conviction procedures fall within the scope of the *Martinez* holding based on the decision in *Trevino*. *See, e.g., Gable*, 2013 WL 4097711, p.8; *Tellez-Vasquez*, 2013 WL 4038462, p.3. Thus, the question is, whether ineffective assistance claims will be considered by Idaho's courts first, or whether Idaho will allow the federal courts to do so instead. For the reasons discussed in Section I, A, 1, *infra*, that determination is accurate. Therefore, the discussion of the rationale for finding a constitutional right to counsel in initial-review collateral proceedings from *Martinez* is relevant to this appeal. The State's argument to the contrary is erroneous.

Therefore, for the reasons discussed by the Supreme Court in *Martinez*, and as set forth in the Appellant's Brief, this Court should recognize the due process right to counsel during initial-review collateral proceedings. Further, it should reverse the district court's decision denying Mr. Grant the assistance of counsel on his petition for post-conviction relief.

B. Mr. Grant Also Should Have Been Appointed Counsel Pursuant To Idaho Statute

The State's response in regard to Mr. Grant's alternate assertion – that he made a sufficient showing to merit appointment of counsel under Idaho's statute – is unremarkable, as it merely quotes the district court's rationale for not appointing counsel. The fact remains that Mr. Grant made a sufficient showing of the possibility of a valid claim (*see* App. Br., pp.13-28), as required by Idaho law. *Swader v. State*, 143 Idaho 651, 654 (2007); *see also Charboneau v. State*, 140 Idaho 789, 792-93 (2004) (*hereinafter, Charboneau I*). His verified, notarized pleadings constitute admissible

evidence on this matter. *Mata v. State*, 124 Idaho 588, 593 (Ct. App. 1993); *Loveland v. State*, 141 Idaho 933, 936 (Ct. App. 2005). Therefore, if true (which, at this stage in the proceedings, they are to be taken to be), they would entitle Mr. Grant to relief, and so the district court erred by not appointing counsel pursuant to Idaho's statute. *Charboneau I*, 140 Idaho at 792-93; *see also Swader*, 143 Idaho at 654.

II.

The District Court Erred When It Summarily Dismissed Mr. Grant's Petition For Post-Conviction Relief Without Properly Considering The Undisputed Factual Allegations He Made In His Verified Petition And Affidavit In Support Of That Petition

Mr. Grant contends, in the alternative, that the district court erred when it summarily dismissed his petition for relief. (App. Br., pp.28-38.) The State responds that Mr. Grant failed to support his claims with admissible evidence, or that other facts in the record disprove his allegations. (Resp. Br., pp.9-17.) The State is wrong because it does not properly apply the rules governing summary dismissal in the post-conviction context. (Resp. Br., pp.10-11, 13, 15-17.) The existence of contradictory evidence does not mean that the facts, construed in the light most favorable to the defendant, would not entitle Mr. Grant to relief. Rather, all the presence of such facts does is create a genuine issue of material fact, which means summary dismissal was inappropriate. This is the same mistake that the district court made. (*See* App. Br., p.29.) Therefore, the State's arguments should be rejected and the district court's decision reversed.

At the summary dismissal phase, it is not the district court's job to determine whether claims are disproved by other evidence in the record (*i.e.*, by evaluating the responses to the guilty plea questionnaire), as the State believes. (Resp. Br., p.11

evidence on this matter. *Mata v. State*, 124 Idaho 588, 593 (Ct. App. 1993); *Loveland v. State*, 141 Idaho 933, 936 (Ct. App. 2005). Therefore, if true (which, at this stage in the proceedings, they are to be taken to be), they would entitle Mr. Grant to relief, and so the district court erred by not appointing counsel pursuant to Idaho's statute. *Charboneau I*, 140 Idaho at 792-93; *see also Swader*, 143 Idaho at 654.

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At the summary dismissal phase, it is not the district court's job to determine whether claims are disproved by other evidence in the record (*i.e.*, by evaluating the responses to the guilty plea questionnaire), as the State believes. (Resp. Br., p.11

("[T]he district court found upon review of [Mr.] Grant's guilty plea questionnaire that [Mr.] Grant understood his right to remain silent . . . .").) The district court's job at the summary dismissal phase is to determine whether the claims present a genuine issue of material fact, because, if they do, an evidentiary hearing is required. *See Charboneau v. State*, 144 Idaho 900, 903 (2007) (*hereinafter, Charboneau II*). That means the district court's job at the summary dismissal phase is only to determine whether the claims in the verified pleadings, *if taken to be true*, would entitle the petitioner to relief. *Id.* When, and only when, "the alleged facts, *even if true*, would not entitle the applicant to relief," may the trial court summarily dismiss the claim.[5] *Id.* (emphasis added); *see also Baldwin v. State*, 145 Idaho 148, 155 (2007) (reaffirming that the courts "must take [the petitioner's] allegations as true, and determine whether a material fact exists that would entitle [the petitioner] to an evidentiary hearing"). At this stage of the proceedings, the district court must accept the petitioner's unrefuted assertions of fact as true, though it need not accept the legal conclusions the petitioner drew from those facts.[6]

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[5] This remains true, regardless of how bare or conclusory the allegations might be. *See Charboneau II*, 144 Idaho at 903; *Baldwin*, 145 Idaho at 153. The State's claim – that just because the allegations are bare or conclusory means summary judgment is appropriate – is inaccurate. (*See, e.g.,* Resp. Br., p.17.) The question to be answered is whether, under those alleged facts, construed liberally in Mr. Grant's favor, he would be entitled to relief. *Charboneau II*, 144 Idaho at 903; *Baldwin*, 145 Idaho at 153. Mr. Grant has met that standard. (App. Br., pp.15-39.)

This rule extends to Mr. Grant's allegations of prejudice, which the State also claims were insufficient. (*See* Resp. Br., pp.10-11; 12, 14, 15.) However, the inferences from the facts in the record are to be "*liberally* construed in favor of the petitioner." *Charboneau I*, 140 Idaho at 792 (emphasis added). When that rule is properly applied to Mr. Grant's assertions, there is sufficient allegation of prejudice to survive summary dismissal. (*See* App. Br., pp.15-39.)

[6] Many of Mr. Grant's factual allegations were unrefuted. (*See, e.g.,* App., Br., pp.21-28.) Those facts must be accepted as true. *Baldwin*, 145 Idaho at 153. The

In fact, in *Baldwin*, the Idaho Supreme Court demonstrated how this rule is supposed to be applied. The Idaho Supreme Court recognized that the facts surrounding Mr. Baldwin's claim that counsel should have filed a motion to suppress based on an invalid search were disputed. *Id.* at 156-57. However, despite the existence of those contradictory accounts, the Idaho Supreme Court concluded: "In either case, *based on Baldwin's factual claims*, the discovery of the heroin in the jacket pocket on the couch does not meet the stop and frisk exception. . . . A genuine issue of material of fact exists as to whether or not the detectives' search and seizure violated the Fourth Amendment." *Id.* (emphasis added). All the existence of those contradictory facts did was create the genuine issue of material fact; it did not justify the district court's decision to summarily dismiss those claims. *See id.*

This is not how the district court applied that rule in this case, nor is it how the State advocates for application of the rule. The State and the district court would allow the mere existence of contrary facts (the statements in the guilty plea questionnaire, for example) to justify summary dismissal of Mr. Grant's claims. (*See, e.g.,* Resp. Br., 11; R., p.98.) Nothing about Mr. Grant's responses in the questionnaire shows that, *if the issues were resolved in Mr. Grant's favor*, he would not be entitled to relief. As such, under a proper application of the rules governing summary dismissal, summary dismissal was inappropriate in this case. (App. Br., pp.37-39; *see generally* App. Br., pp.15-39.) Therefore, the district court's decision to summarily dismiss the petition was in error, and none of the State's arguments to the contrary hold merit.

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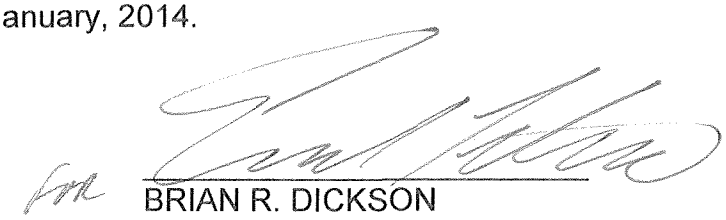
only question that remains for the courts in that situation is whether, under those facts, the petitioner would be entitled to relief. *Id.*

CONCLUSION

Because the district court erroneously denied his request for the assistance of post-conviction counsel, Mr. Grant respectfully requests that this Court vacate the order denying him the assistance of counsel, as well as the order summarily dismissing his post-conviction petition, and remand this case for further proceedings. Additionally, because the district court erroneously summarily dismissed those claims, he respectfully requests this Court instruct that an evidentiary hearing be among those future proceedings.

DATED this 2nd day of January, 2014.



BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of January, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

WOODROW JOHN GRANT
INMATE # 80692
ICC
PO BOX 70010
BOISE ID 83707

ROBERT C NAFTZ
DISTRICT COURT JUDGE
E-MAILED BRIEF

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EVAN A. SMITH
Administrative Assistant

BRD/eas