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IN THE SUPREME COURT OF THE STATE OF IDAHO

CAROLINE EGUILIOR,)
) Nos. 44518 & 44519
 Petitioner-Appellant,)
) Twin Falls County Case Nos.
 v.) CV-42-2016-1991 & CV-42-2016-1992
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

HONORABLE RANDY J. STOKER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Caroline Eguilior appeals from the district court's order summarily dismissing her post-conviction petition.

Statement Of Facts And Course Of Proceedings

In January 2015, Eguilior stole a safe containing \$1,490.07 from a Twin Falls Subway restaurant. (PSI, p.5.¹) Three days later, Eguilior robbed a second Twin Falls Subway restaurant, where she was previously employed, at gunpoint. (PSI, p.4.) During that robbery, Eguilior tied the hands of two Subway employees with zip ties. (Id.) After taking \$315 from the restaurant cash register, Eguilior fled the scene in an employee's car. (Id.) The employee recognized Eguilior's voice and was able to identify her to police. (Id.)

Eguilior was arrested shortly thereafter. (PSI, pp.4-5.) Officers recovered a stolen handgun from a bag Eguilior was seen discarding in a dumpster. (PSI, p.4.) Officers also recovered, from Eguilior's possession, a Home Depot credit card belonging to another individual. (PSI, p.5.) A police review of Home Depot surveillance video revealed that, in January 2015, Eguilior made two purchases totaling \$773.12 with the card. (Id.)

¹ In the two post-conviction cases which are the subject of this appeal, the district court took judicial notice of documents associated with the underlying criminal cases. (R., p.23.) The Idaho Supreme Court granted Eguilior's motion to augment the appellate record with these documents. (4/24/17 Order.) In this brief, the state cites to the PSI as "PSI," and other documents from the augmentation as "Aug."

In Twin Falls County Case No. CR 2015-00553, the state charged Eguilior with two counts of burglary, two counts of grand theft, two counts of aggravated assault, two counts of second-degree kidnapping, two counts of robbery, and one count of unlawful possession of a firearm; in Twin Falls County Case No. CR 2015-04279, the state charged Eguilior with two counts of forgery of a financial transaction card. (See Aug., p.31.) Pursuant to a plea agreement, Eguilior pled guilty to the two forgery counts, unlawful possession of a firearm, and one count of robbery. (See Aug., pp.15-31.) The state agreed to dismiss the remaining charges. (Aug., p.31.) Eguilior agreed to waive her rights to file a direct appeal or an I.C.R. 35(b) motion. (Id.) Consistent with the joint recommendation of the parties, the district court imposed a unified 20-year sentence with eight years fixed for robbery, a fixed five-year sentence for unlawful possession of a firearm, and unified 12-year sentences with eight years fixed for both forgery charges. (Aug., pp.15-31.) The court ordered all of the sentences to run concurrently. (Id.)

Eguilior filed two *pro se* post-conviction petitions.² (R., pp.4-18, 68-82.) In each petition, Eguilior sought only a modification of her sentences. (R., pp.6, 70.) Eguilior requested the appointment of counsel in both cases. (R., pp.19-22, 83-86.) Of the numerous claims raised in these petitions, Eguilior asserted, relevant to this appeal, that her trial counsel was ineffective for pressuring her

² In Twin Falls County Case No. CV-2016-01991, Eguilior challenged the sentences imposed in CR-2015-04279, and in Twin Falls County Case No. CV-2016-01992, Eguilior challenged the sentences imposed in CR-2015-00533. (R., pp.4-18, 68-82.)

into pleading guilty and for preventing her from taking the cases to trial. (R., pp.4-18, 68-82.)

The district court entered a notice of intent to dismiss both petitions. (R., pp.23-26.) The court concluded that because Eguilior sought only a modification of her sentences, her post-conviction claims that did not implicate trial counsel's performance with respect to these sentences were frivolous. (Id.) The court also concluded that the allegations that *did* relate to sentencing were conclusory and that "there is nothing in this record to establish that there exists other evidence, which if presented to the court, would have justified a sentence other than the stipulated sentence." (R., pp.24-25 (footnote omitted).) The court also denied Eguilior's motions for the appointment of counsel, after finding that the claims were frivolous, and "not ones that would be filed by a person who would retain counsel." (R., p.24.) Three weeks later, the district court dismissed both petitions. (R., pp.27-28.³) Eguilior timely appealed, and the Idaho Supreme Court consolidated the two cases. (R., pp.43-46, 105-108; 10/7/16 Order.)

³ Eguilior mailed a letter to the district court in response to the notice of intent to dismiss. (R., pp.95-97.) The letter was dated July 1, 2016, but was not filed in the Twin Falls County district court until July 11, 2016, five days after the court summarily dismissed the petitions. (R., pp.93-97.) In the letter, Eguilior did not attempt to modify the remedy sought in her post-conviction petitions. (See R., pp.95-97.) After she filed her Appellant's brief in this case, Eguilior filed an I.R.C.P. 60(b) motion for relief from judgment in the district court, requesting that the court consider her response to its notice of intent to dismiss, and to grant appropriate relief. (See 6/13/17 Motion to Stay the Appellate Proceedings.) Eguilior also filed a motion to stay the appellate proceedings in this case pending the district court's ruling on the I.R.C.P. 60(b) motion. (Id.) The district court denied the I.R.C.P. 60(b) motion, and the Idaho Supreme Court thereafter denied the motion to stay the appellate proceedings as moot. (6/28/17 Order.)

ISSUE

Eguilior states the issue on appeal as:

Whether the district court erred by denying Ms. Eguilior's motion for appointment of post-conviction counsel.

(Appellant's brief, p.4.)

The state rephrases the issue on appeal as:

Has Eguilior failed to demonstrate that the district court abused its discretion by denying her motions for appointment of counsel?

ARGUMENT

Eguilior Has Failed To Demonstrate That The District Court Abused Its Discretion By Denying Her Motions For Appointment Of Counsel

A. Introduction

Eguilior contends that the district court abused its discretion by denying her motions for the appointment of counsel. (See generally Appellant's brief.) Specifically, Eguilior contends she was entitled to appointed counsel on her claim that her trial counsel was ineffective for pressuring her into pleading guilty and for preventing her from taking the cases to trial. (Id.) A review of the record reveals that this claim was frivolous because Eguilior sought only sentencing relief in the post-conviction petitions. Eguilior thus failed to raise the possibility of a valid claim, and has failed to show that the district court abused its discretion in denying her motions to appoint counsel.

B. Standard Of Review

The decision to grant or deny a request for court-appointed counsel to represent a post-conviction petitioner pursuant to I.C. § 19-4904 is discretionary. Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); Plant v. State, 143 Idaho 758, 761, 152 P.3d 629, 632 (Ct. App. 2007).

C. Eguilior Was Not Entitled To The Appointment Of Counsel On Her Claim That Trial Counsel Was Ineffective For Pressuring Her Into Pleading Guilty And For Preventing Her From Taking The Case To Trial

Post-conviction counsel should be appointed if the petitioner qualifies financially and "alleges facts showing the possibility of a valid claim such that a reasonable person with adequate means would be willing to retain counsel to

conduct a further investigation into the claim.” Swader v. State, 143 Idaho 651, 655, 152 P.3d 12, 16 (2007); see also Charboneau v. State, 140 Idaho at 793, 102 P.3d at 1112; I.C. § 19-4904. If the claims are so patently frivolous that there appears no possibility that they could be developed into a viable claim even with the assistance of counsel, however, the court may deny the motion for counsel and proceed with the usual procedure for dismissing meritless post-conviction petitions. Workman v. State, 144 Idaho 518, 529, 164 P.3d 798, 809 (2007); Newman v. State, 140 Idaho 491, 493, 95 P.3d 642, 644 (Ct. App. 2004).

In this case, the district court properly concluded that Eguilior’s claim that her trial counsel was ineffective for pressuring her into pleading guilty and for preventing her from taking the cases to trial was frivolous. (R., pp.23-26.) As the court recognized, even if Eguilior’s factual assertions regarding this claim were true, she would still not be entitled to her sole requested relief of sentence modification because there is no causal connection between that claim and the requested relief. (R., p.25.) The court further noted that in requesting sentencing relief, Eguilior was essentially attempting to use the post-conviction petition to obtain I.C.R. 35(b) relief – but that Eguilior had previously waived her right to seek such relief in her plea agreement with the state and that, in any event, the time for presenting an I.C.R. 35(b) motion for reduction of sentence had expired.⁴ (Id.)

On appeal, Eguilior suggests that, if appointed, counsel could have amended her petition to request different relief – such as withdrawal of her guilty

⁴ Further, reduction of sentence is not a basis for post-conviction relief. Williams v. State, 113 Idaho 685, 687, 747 P.2d 94, 96 (Ct. App. 1987).

plea and vacating her conviction. (Appellant’s brief, pp.9-10.) However, the purpose of appointing counsel to represent a post-conviction petitioner who has alleged facts raising the possibility of a valid claim is to assist the petitioner in developing those facts – not to direct a petitioner to seek a different type of relief. See Green v. State, 160 Idaho 657, 658, 377 P.3d 1120, 1121 (Ct. App. 2016) (“[I]f a petitioner alleges facts that raise the possibility of a valid claim, the district court should appoint counsel in order to give the petitioner an opportunity to work with counsel and properly allege the necessary supporting facts.” (citing Charboneau, 140 Idaho at 793, 102 P.3d at 1112)). As the Idaho Supreme Court further explained in Charboneau:

As stated above, a needy applicant for post-conviction relief is entitled to court-appointed counsel unless the trial court determines that the post-conviction proceeding is frivolous. Idaho Code § [19–8522(2)(c)⁵] sets forth the standard for determining whether or not a post-conviction proceeding is frivolous. It is frivolous if it is “not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.” When applying that standard to *pro se* applications for appointment of counsel, the trial court should keep in mind that petitions and affidavits filed by a *pro se* petitioner will often be conclusory and incomplete. Although facts sufficient to state a claim may not be alleged because they do not exist, they also may not be alleged because the *pro se* petitioner simply does not know what are the essential elements of a claim.

It is essential that the petitioner be given adequate notice of the claimed defects so he has an opportunity to respond and to give the trial court an adequate basis for deciding the need for counsel based upon the merits of the claims. If the court decides that the claims in the petition are frivolous, the court should provide sufficient information regarding the basis for its ruling to enable the

⁵ This statute subsection cited by the Idaho Supreme Court in 2004 in Charboneau has since been re-codified. Idaho S.L. 2013, ch. 256, § 1, eff. July 1, 2013.

petitioner to supplement the request with the necessary additional facts, if they exist. Although the petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims, he should be provided with a meaningful opportunity to supplement the record and to renew his request for court-appointed counsel prior to the dismissal of his petition where, as here, he has alleged facts supporting some elements of a valid claim.

Charboneau, 140 Idaho at 792-793, 102 P.3d at 1111-1112 (quoting Brown v. State, 135 Idaho 676, 23 P.3d 138 (2001)).

Therefore, while a *pro se* post-conviction petitioner may be entitled to the appointment of counsel to assist in the factual development of a claim even where the claim is conclusory, incomplete, or otherwise lacking in essential elements, Idaho law does not require appointment of counsel simply to direct or instruct a petitioner to seek different relief.

In this case, there is rational reason why Eguilior may not have wanted to withdraw her guilty plea, and instead, only sought a modification of her sentence. As the district court noted (R., p.25 n.1), Eguilior's plea agreement with the state resulted in the dismissal of nine felony charges (Aug., p.31). Eguilior would be in the position to face those charges anew had she succeeded in obtaining the relief that she now, on appeal, asserts that appointed counsel could have amended her petition to seek.

Because no further factual development of her claim that her trial counsel was ineffective with respect to her guilty plea would have entitled Eguilior to a modification of her sentence, Eguilior failed to raise the possibility of a valid claim. Therefore, Eguilior has failed to demonstrate that the district court abused its discretion in denying her motion for appointment of counsel.

On appeal, Egulior also contends that the district court applied an incorrect standard to determine whether post-conviction counsel should have been appointed. (Appellant's brief, pp.5-6.) Specifically, Egulior contends that the district court erred by concluding that the petition was frivolous "based only on the perceived merits of the allegations made, rather than assessing whether those allegations could, with the assistance of counsel, be developed into a viable claim." (Appellant's brief, p.5 (citing Swader, 143 Idaho at 653, 152 P.3d at 16).)

In Swader, the Idaho Supreme Court distinguished between post-conviction claims that are frivolous as presented to the court, and post-conviction claims that are frivolous because they do not even raise the possibility of a valid claim:

When considering a motion for appointment of counsel, the trial court must do more than determine whether the petition alleges a valid claim. The court must also consider whether circumstances prevent the petitioner from making a more thorough investigation into the facts. An indigent defendant who is incarcerated in the penitentiary would almost certainly be unable to conduct an investigation into facts not already contained in the court record. Likewise, a *pro se* petitioner may be unable to present sufficient facts showing that his or her counsel's performance was deficient or that such deficiency prejudiced the defense. That showing will often require the assistance of someone trained in the law. Therefore, the trial court should appoint counsel if the petition alleges facts showing the possibility of a valid claim such that a reasonable person with adequate means would be willing to retain counsel to conduct a further investigation into the claim.

Swader, 143 Idaho at 654-655, 152 P.3d at 15-16.

For the reasons set forth above, the concerns expressed in Swader are not applicable in this case, and Egulior's contention that the district court applied

the wrong standard thus fails. The district court did not conclude that Egulior's ineffective assistance of counsel claims concerning the entry of her plea were frivolous because they lacked factual development, or because Egulior was unable to adequately investigate the case — defects which could have been theoretically remedied by appointed counsel. Instead, the court concluded that these claims were frivolous because they lacked a causal connection with Egulior's sole requested relief of sentence modification. Under this reasoning, no factual development of the claims could have remedied this defect. The court thus necessarily and appropriately concluded that these claims were so patently frivolous that there was no possibility that they could be developed into viable claims even with the assistance of counsel. See Newman, 140 Idaho at 493, 95 P.3d at 644.

Because she sought only modification of her sentence, Egulior failed to allege facts raising a possibility of a valid ineffective assistance of counsel claim with respect to her guilty plea. Therefore, Egulior has failed to demonstrate that the district court abused its discretion by denying her motions for appointment of counsel to represent her on this claim.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order dismissing Eguilior's post-conviction petition.

DATED this 29th day of June, 2017.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of June, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd