

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-20-2015

McDermott v. State Appellant's Brief Dckt. 41841

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"McDermott v. State Appellant's Brief Dckt. 41841" (2015). *Not Reported*. 4171.
https://digitalcommons.law.uidaho.edu/not_reported/4171

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

Inmate name Jason M. Dermott
IDOC No. 62020
Address TCID / A1-202A
Crate # IN83544

Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

Jason Ryan M. Dermott,)
Appellant,)
vs.)
State of Idaho,)
Respondent.)

Case No. 41841-2014

APPELLANT'S BRIEF

Appeal from the District Court of the FOURTH Judicial District
for Ada County.
The Honorable Darla Williamson, District Judge presiding.

COPY

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities.....	4-5
Statement of the Case.....	6
A) Introduction; Nature of the Case.....	6
B) Statement of Facts And Course of Proceedings.....	6-7
Issues Presented On Appeal.....	8
Argument.....	9
A) Introduction.....	9-10
B) The State And Court Have Failed To Recognize The Plaintiff's Presentation Of Hard Facts And Evidence That Establish A Genuine Material Factual Dispute.....	10-11
C) Plaintiff Has Correctly And Sufficiently Raised Proper Argument(s) And Facts To Describe His Issues, To Include The Violations Of His Due Process Rights.....	11-16
D) Plaintiff Has Correctly Raised Substantive Grounds For Relief From His Conviction And Sentence Where Such Grounds Were Raised Properly Under Claims of Ineffective Assistance Of Counsel.....	16-18

TABLE OF CONTENTS - Cont

	<u>Page</u>
<u>Standard Of Review</u>	18
<u>Conclusion</u>	19
<u>Certificate Of Mailing</u>	20

TABLE OF CASES AND AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Bradbury v. Idaho Judicial Council</u> , 233 P.3d 38, 149 Idaho 107 (2009)....	9
<u>State v. Edmanson</u> , 113 Idaho 230, 245, 743 P.2d 459, 474 (1987) (J. Bistline dissenting) (quoting <u>Hawkins v. Superior Court</u> , 586 P.2d 916 (Ca. 1978).....	9-10
<u>State v. Osborne</u> , 1997, 130 Idaho 365, 941 P.2d 337 (pet. for rev. den.).....	10
<u>Roeder v. State</u> , 162 P.3d 794, 144 Idaho 415 (2007).....	12
<u>Charboneau v. State</u> , 174 P.3d 870, 144 Idaho 900 (2007) -reh.den.....	12-13
<u>State v. So</u> , 1951, 71 Idaho 324, 231 P.2d 734.....	13
<u>Hairston v. State</u> , 156 P.3d 552, 144 Idaho 51, (cert. granted, vacated 128 S.Ct. 1442 (2007)).....	13
<u>State v. Pecos</u> , 132 Idaho, 359, 972 P.2d 737 (Ct. App. 1998).....	14
<u>Lewis v. City of Irvine, Kentucky</u> , 899 F.2d 451, 456-57 (6th Cir. 1990).....	15
<u>Bond v. U.S. I.F.</u> 3d 631 (CA7 1993).....	15
<u>Murphy v. State</u> , Opinion No. 24 (2014).....	16
<u>Quartararo v. Hansmaier</u> , 28 F.Supp. 2d 749 (E.D.N.Y. 1998).....	18

Pino v. Dalsheim, 605 F.Supp. 1305, 1319 (S.D.N.Y. 1984) 18

Thomas M. Cooley - "A Treatise On The Constitutional Limitations", 356 (1868) . . 18

Statutes

I.C. § 19-2406 10

I.C. § 19-4901 10

Criminal Rule 34 10

Idaho Criminal Rule 6.2 12

Black's Law Dictionary, p. 1689 - "vagueness doctrine" 13

U.S.C.A. Constitutional Amendment 14 13

West's I.C.A. Constitutional Article 1 § 13 13

Idaho Rules of Evidence, Rule 614(b) 14

Idaho Rules of Evidence, Rule 801 14

I.C. § 19-4908 16

STATEMENT OF THE CASE

A) Nature of the Case:

Jason Ryan McDermott (Plaintiff) appeals from the District Court's Order [2013-1926] summarily dismissing his successive petition for post-conviction, for the reason that the District Court erred in dismissing his claim because said dismissal shows undue bias and prejudice against the plaintiff's substantial rights.

B) Statement of Facts And Course of Proceedings:

On June 30th 2005, the Plaintiff was sentenced to Life with no Parole plus 10 yrs enhancement for Murder in the First Degree, Conspiracy to Commit Murder in the First Degree, and Use of a Firearm in the Commission of a Felony. (R., pp ~~74-75~~³⁵¹). Plaintiff's attorney filed a timely appeal. (Id.) The Court filed an Unpublished Opinion on July 2nd, 2009. (Opinion No. 518). In response, a Petition for Review was filed, and denied by the Court, on Aug. 24th, 2009. - A remittitur was filed on Aug. 27th, 2009. Plaintiff filed a Post Conviction Petition on May 7th 2010. It was dismissed on October 29th 2010. Plaintiff filed a timely appeal (Packet No. 38288), on

December 20th 2011, (Pro se). The Court of Appeals filed its Unpublished Opinion affirming its denial of Plaintiff's appeal on May 17th 2012, (Unpublished Opinion No. 479) Plaintiff filed petition for review on May 28th 2012. Court denied petition on June 22nd 2012. Plaintiff filed an instant successive post conviction petition on Dec. 24th 2012. The District Court dismissed Plaintiff's successive post-conviction petition on January 17th 2014.

Issues Presented On Appeal

- 1) Have The State And Court Failed To Recognize The Plaintiff's Presentation Of Hard Facts And Evidence That Establishes A Genuine Material Factual Dispute?
- 2) Has The Plaintiff Correctly And Sufficiently Raised Proper Arguments And Facts To Describe His Issues; To Include The Violations Of His Due Process Rights?
- 3) Has The Plaintiff Correctly Raised Substantive Grounds For Relief From His Conviction And Sentence Where Such Grounds Were Raised Properly Under Claims Of Ineffective Assistance Of Counsel?

ARGUMENT

A) Introduction:

Plaintiff contends that the District Court erred in summarily dismissing his successive post conviction for relief from his conviction and sentence because it shows undue bias and prejudice against the plaintiff's substantial rights. The Court has continuously refused to recognize the plaintiff's consistent claims and arguments, has made obvious biased comments & rulings against plaintiff concerning the incident surrounding plaintiff's TBI [Tr., p. 2059 Ls. 1-5] (which is a direct violation of a judge's role), and has completely ignored showings of proof - with evidence and arguments - of prosecutorial misconduct [Plaintiff's successive post-conviction petition - Exhibits section] & Judicial misconduct [Plaintiff's successive post ⁱⁿ Bradbury v. Idaho Judicial Council, 233 P.3d 38, 149 Idaho 107 (2009) - "A district judge is presumed to know the law, and it necessarily follows that district judges must also comply with the law." The law requires a judge to maintain a neutral, detached, unbiased, and unprejudiced role. (See, State v. Edmonson, 113 Idaho

230, 245, 743 P.2d 459, 474 (1987) (J. Bistline dissenting) (quoting Hawkins v. Superior Court, 586 P.2d. 916 (Cal. 1978)).

B) The State And Court Failed To Recognize The Plaintiff's Presentation Of Hard Facts And Evidence That Establish A Genuine Material Factual Dispute.

The Plaintiff contends that his petition for successive post relief correctly laid proper foundation and provided extensive facts, evidence, and arguments to back up all points raised in his 1st post conviction petition. He raised several claims and provided proper & sufficient case cites and arguments to support his claims. The following are some concise points raised by plaintiff: ① Prosecutorial misconduct for not verifying or producing exculpatory evidence; [Plaintiff's Succ. Post petition, pp. 18-19, Pts 1-2], which was discovered by plaintiff after trial: "The appropriate mechanism to challenge nondisclosure of evidence would be for... post-conviction petition." (State v. Osborne, 1997, 130 Idaho 365, 941 P.2d 337. - petition for review denied) (see also, I.C. § 19-2406, 19-4901, & Crim. R. 34); ② No limitations to proving Conspiracy which means there's no limits preventing misuse

of info or misrepresentation of facts; [Succ. Post, p. 20, Pt. 3];

③ Hearsay and double-hearsay evidence was used to convict plaintiff, which is highly improper; [Succ. Post, p. 20, Pt. 4 (w/reference to "Exhibits" sect. B(a)(4))]; ④ Co-defendant Hostford's testimony was improperly used. [Succ. Post., pp. 20-21, Pts 5-6]; ⑤ Judicial misconduct [Succ. Post., pp. 22-23, pt. B(b).]; ⑥ A liberty issue became known when the jurors became aware of plaintiff being in-custody. This creates a Liberty interest because it causes bias amongst the jurors, causing them to view plaintiff as guilty - since he has been arrested and jailed - and seriously minimizes the "fairness" factor; [Succ. Post, pp. 23-24]; [Further "liberty" points are listed from pp. 24-28, pts. a-h - including the point mentioned in the "Introduction" of this document, concerning plaintiff's TBI].

With these points, added with the case cites and statutes cited, the plaintiff has adequately presented a viable argument which supports his claims for relief.

C) The Plaintiff Has Correctly And Sufficiently Raised Proper Arguments And Facts To Describe His Issues; To Include The Violations Of His Due Process Rights

Plaintiff contends his Due Process rights were violated when the Court summarily dismissed his first post-conviction petition, then the appeal, and now for his successive post conviction.

There are several points raised in his successive post petition, to which the plaintiff sufficiently provided arguments and facts to support them. The following points are plaintiff's due process rights that were violated: ① The prosecution failed to provide known exculpatory evidence which would have shown scientific evidence placing only Mr. Hostford & Mr. Wall (co-defendants), along with the victim, at the scene of the crime. The forensics evidence showed the lack of verifiable evidence placing plaintiff at the scene. [Succ. Post, pp. 18-20, p. 1-2]

(The District Court is under the misguided belief that this fact does not matter.) Idaho Crim. R., Rule 6.2 states: "... when a prosecutor... is personally aware of substantial evidence which directly negates the guilt of the subject of the investigation, the prosecutor must... disclose such evidence..." (Succ. Post, p. 20.2) (also, see Roeder v.

② [sic] State, 162 P.3d 794, 144 Idaho 415 (2007), and, Charboneau v. State,

174 P.3d 870, 144 Idaho 900 (2007) - reh. den.;

② There are no limitations to proving Conspiracy, - which means there is no real limit to preventing misuse of info or misrepresentation of facts & evidence, - despite that it is a separate charge. [Succ. post., p. 20, pt. 3] It is unlawful to use the Conspiracy charge to gain a conviction for Murder, - esp. when evidence obtained for the Conspiracy charge would otherwise be illegal to obtain for a Murder charge. (See, succ. post, p. 20.1) [See, Black's Law Dict., p. 1689, "vagueness doctrine" ~~stating~~, "The doctrine - based on the Due Process Clause - requiring that a criminal statute state explicitly and definitely what acts are prohibited or restricted, so as to provide fair warning and preclude arbitrary enforcement." ~~And~~, State v. So, 1951, 71 Idaho 324, 231 P.2d 734 saying "... the act of one is the act of both."; and, Hairston v. State, 156 P.3d 552, 144 Idaho 51, certiorari granted, vacated 128 S.Ct. 1442 (2007) [U.S.C.A. Const. Amend. 14; West's I.C.A. Const. Art. 1813 - "A statute that is vague, indefinite, or uncertain violates the Due Process Clause of the Federal & State Constitution." (Succ. Post, pp 8.1 - 8.2)];

Appellant's Brief - pg 13

③ Hearsay & double-hearsay evidence are inadmissible and unlawful, esp. when it is derived from tainted testimony (such as co-defendant or unreliable witness testimony) and is often considered "derivative evidence". [Succ. post, p. 20, pts. 4-5]. (See, State v. Pecos, 132 Idaho 359, 972 P. 2d 737 (Ct. App. 1998)) - "When statement of friend of defendant is made after arrest and not in furtherance of conspiracy, was not properly admissible under I.R.E. Rule 801, either as a statement against interest or as a statement of a co-conspirator." (Succ. post, p. 10.1). "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible..." (I.R.E. Rule 614(b)) - such as co-defendant Hestford's many falsified statements & testimony. (Succ. post., pp. 9-10, pt. 7). Hestford provided both hearsay and unreliable, false testimony - which was accounted for in his many differing statements to police. (Succ. post., p. 21, pt. 6);

④ There are several points of judicial misconduct raised: ④ During the guilt phase, the jurors asked the ~~judge~~ [sic] court if they had to ~~give~~ decide plaintiff's guilt with only murder 1 or manslaughter. The judge erroneously instructed the jurors to "follow the jury

instructions, they are clear as to what you need", - knowing fully that several of the instructions were misleading, conflicted, and there was no clear instruction for how to give plaintiff Murder in the 2nd degree (which is what the jurors wanted to give). (Succ. post., p. 6, pt. A(b)(1)) (See, Lewis v. City of Irvine, Kentucky 899 F.2d 451, 456-57 (6th Cir. 1990)) - "error not harmless when trial court erroneously instructed the jury on the legal standards applicable ~~to~~ [sic];

(b) Procedural error occurred when court disavowed obvious signs of plaintiff's incompetence during trial. (Succ. post, p. 8, pt. 4; p. 8, 3 - "Bond v. U.S. 2F 3d 631 (CA7 1973)" ; p. 25, pt. (e)); (c) At sentencing, judge ignored mitigating circumstances concerning plaintiff's TBI, and instead favored the false info obtained by Mr. Shane Wendland - the man who shot plaintiff in late 2001 - when fashioning ~~an~~ sentence. The judge misused the false statement of plaintiff's attacker and ~~instead~~ [sic] used that false info against plaintiff, which showed undue bias and prejudice, and judicial misconduct when the judge ignored her role of "detached & neutral" magistrate. (Succ. post, pp 26-27, pts (f) & (g)).

Appellant's Brief - pg. 15

These three judicial misconduct points cause a liberty interest.

There are several other points, but these 3 "hit the nail on the head".

D) The Plaintiff Has Correctly Raised Substantive Grounds For Relief From His Conviction And Sentence Where Such Grounds Were Raised Properly Under Claims Of Ineffective Assistance Of Counsel

The plaintiff contends he has raised sufficient, adequate and proper grounds for relief, where he has covered many, numerous claims under Ineffective Assistance of Counsel. Plaintiff ~~has~~ [sic] correctly followed the guidelines of I.C. § 19-4900 - 4908, when he raised multiple claims "in his original, supplemental or amended application." [I.C. § 19-4908. (quoted in Murphy v. State, Opinion No. 24 (2014))], Plaintiff recognizes the decision made in Murphy v. State; however, he points out that his post-conviction & successive post petitions are not merely based solely on I.A.C. claims, but also on claims of Procedural error, prosecutorial misconduct, judicial misconduct, and the breaking of his Due Process rights under the Idaho & U.S. constitutions.

Listed below are the many, concise claims under his IAC section of his successive post petition (which are simply re-raised from his original application):

- ① Post conviction counsel failed to follow plaintiff's instructions to amend his petition. [~~Succ. post~~, p 4-6 (including addendums), pt. ALA)];
- ② Counsel in Direct Appeal deceived, by misinforming & misguiding, plaintiff ~~by~~ as to his "shot" at overturning his conviction, and only attacked the sentence. [Succ. post, pp 6-11 - noting several other points as being claims that could have been raised in an attempt to overturn the conviction) (includes supplemental addendums and standards of review), pt. ALB)];
- ③ Appellate counsel in direct appeal did not sufficiently raise or provide adequate facts & evidence to support the claims they did raise. [~~Succ. post~~, pp 11-14 (including addendums w/ case cites), pt. ALA)];
- ④ Counsel in original trial failed to raise, investigate or investigate further many numerous claims that would have surely brought a different outcome. [Succ. Post, pp. 14-18 (listing all claims raised in original post-conviction petition, such as: ④ Lack of USR & DNA Evidence; ⑤ Coercion by torture to obtain testimony at arrest - when officers kept plaintiff handcuffed for 2 hrs before

speaking with him; (C) Illegally obtained statement by co-defendant Hostford - who was a minor at time of arrest; (D) Co-defendant Hostford provided several, false statements to police and prosecutor, but prosecutor & Court still allowed testimony - and put much "weight" into it) (E) includes addendums and case cites, such as: Quartararo v. Hanslmaier, 28 F. Supp. 2d 749 (E.D. N.Y. 1998) - "holding that evidence insufficient of physical evidence to support conviction of murder." (as support), pt. A(d)]

STANDARD OF REVIEW

"There is reason to believe that if (the prisoner) had been afforded those rights which he was wrongly denied, he might well have been acquitted of the entire charge; (Reno v. Dalsheim, 605 F. Supp. 1305, 1319 (S.D. N.Y. 1984))

And, "Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." [Thomas M. Cooley] - "A Treatise On The Constitutional Limitations", 356 (1868)]

Appellant's Brief - pg. 18

CONCLUSION

Plaintiff has provided proper grounds to support his successive post conviction petition by showing the Court that a genuine issue exists enough to warrant a reversal and vacation of his conviction and sentence.

Therefore, Plaintiff respectfully requests this Court reverse the lower court's decision summarily dismissing plaintiff's successive post petition, and asks the Court to vacate his judgement and remand his case back to the District Court for rehearing, retrial, or new trial.

Respectfully submitted this 13th day of January, 2015.

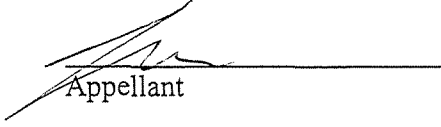

Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of January, 2015, I mailed a true and correct copy of the APPELLANT'S BRIEF via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

Clerk of the Court
Supreme Court
PO Box 83720
Boise, ID 83720-0101

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010


Appellant