1-10-2018

Eguilior v. State Appellant's Reply Brief Dckt. 44518

IN THE SUPREME COURT OF THE STATE OF IDAHO

CAROLINE EGUILIOR,	)	
	)	**NOS. 44518 & 44519**
Petitioner-Appellant,	)	
v.	)	**TWIN FALLS COUNTY NOS.**
	)	**CV42-16-1991 & CV42-16-1992**
STATE OF IDAHO,	)	
	)	**APPELLANT'S**
Respondent.	)	**REPLY BRIEF**
	)	

REPLY BRIEF OF APPELLANT

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

Catherine Eguilior contends the district court erred by refusing to appoint post-conviction counsel, both in regard to her initial petition and in regard to her motion for reconsideration under I.R.C.P. 60(b). The main issue in this case is her claim that trial counsel refused to honor her decision to go to trial. Her notarized allegations about trial counsel's performance in that regard establish the possibility of a valid claim of error in that regard.

The State does not address the merits of that claim. Rather, it makes various procedural arguments which seek to prevent this Court from addressing that claim. Those arguments ignore Idaho's stated preference to have claims resolved on their merits rather than technical pleading requirements, particularly in cases where the failure to meet those technical requirements is due to a *pro se* petitioner's inexpert draftsmanship. The merits of the State's arguments are also contrary to the precedent on point.

Therefore, this Court should reject the State's arguments, vacate the order dismissing Ms. Eguilior's petition, and remand this case for further proceedings after the appointment of post-conviction counsel so that it can actually address the merits of the potentially-viable claim of error Ms. Eguilior presented.

Statement of the Facts and Course of Proceedings

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

ISSUES

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

II. Whether the district court erred by denying Ms. Eguilior's motions for appointment of counsel because she presented the possibility of a valid claim for reconsideration of the judgment under I.R.C.P. 60(b)(1).

III. Alternatively, whether the district court erred by denying Ms. Eguilior's motions for appointment of counsel because she had presented the possibility of a valid claim for reconsideration of the judgment under I.R.C.P. 60(b)(6).

ARGUMENT

I.

The District Court Erred By Denying Ms. Eguilior's Motion For Appointment Of Post-Conviction Counsel

The reason the Legislature provided for appointing post-conviction counsel is to assist petitioners in bringing meritorious claims of error to the courts' attention. *See, e.g., Swader v. State*, 143 Idaho 651, 655 (2007); I.C. § 19-4904. A claim of error is the assertion of facts which show that a right has been violated. BLACK'S LAW DICTIONARY, 105 (3rd pocket ed. 2006). A remedy, on the other hand, is the means of enforcing that right, the means by which the court redresses a wrong that has been proved. *Id.* at 608. Therefore, the claim for relief is simply a procedural aspect of the complaint in which the plaintiff formally asks the court to redress the alleged wrong. *Id*. at 105. As such, the claim of remedy has no impact on whether the underlying claim of error itself is meritorious. That means a faulty claim for relief is not fatal to the claim of error. That is why I.R.C.P. 54(c) provides: "Every other final judgment [except default judgments] should grant the relief to which the party is entitled, *even if the party has not demanded that relief in its pleadings.*" (emphasis added).

This point has been reiterated several times by Idaho's courts. As the Idaho Supreme Court put it, "[i]t is clear that a trial court may and is required to grant any relief to a party which the evidence demonstrates a party is entitled to, *whether or not such has been specifically requested*." *Cady v. Pitts*, 102 Idaho 86, 90 (1981) (emphasis added); *accord O'Connor v. Harger Constr., Inc.*, 145 Idaho 904, 911 (2008). The Court of Appeals "agree[s] that the judge had the authority—even the duty—to grant the relief to which [plaintiffs] were shown to be entitled *although they had not demanded such in their pleadings.*" *Child v. Blaser*, 111 Idaho

702, 704 (Ct. App. 1986) (emphasis added). Therefore, as that precedent demonstrates, a party can establish a viable claim of error even if her claim for remedy is flawed.

Despite those clear statements of the relevant law, the State still believes that a *pro se* petitioner's flawed claim for relief based on a misunderstanding of what relief is available is fatal to her claim of error – that without properly identifying the remedy, there is no possibility of proving the underlying claim of error true. (Resp. Br., p.10 ("Because she sought only modification of her sentence, [Ms.] Eguilior failed to allege facts raising the possibility of a valid ineffective assistance of counsel claim with respect to her guilty plea.").) Since that argument would eliminate the distinction between claims of error and claims for relief embodied in I.R.C.P. 54(c) and recognized by Idaho's appellate courts, this Court should reject that argument. Instead, it should remand this case for the appointment of post-conviction counsel in light of the fact that Ms. Eguilior's allegation identified the possibility of a valid claim of error, for which, if she ultimately proved that error occured, the district court would be required to fashion appropriate relief regardless of what relief Ms. Eguilior requested in her petition.

Worse, the State's argument suggests that post-conviction counsel is bound to only the issues the *pro se* petitioner raised; that he cannot fix technical procedural flaws in the petition. (*See* Resp. Br., p.8 ("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.") That stance is wholly inconsistent with the reason the Legislature authorizes the appointment of counsel in post-conviction: post-conviction counsel is supposed to be appointed in all cases where a person with

means would hire an attorney to help them bring a claim of error to the court's attention. *Swader*, 143 Idaho at 655.

Here, the claim of error is clear: trial counsel refused to honor Ms. Eguilior's decision about whether to take the case to trial. (R., pp.8, 72 (Ms. Eguilior's notarized allegations about counsel's statements to her).) A person with means would reasonably hire an attorney to assist them in bringing such a claim of error to the court's attention. *See State v. Abdullah*, 158 Idaho 386, 505 (2015) (reiterating that the defendant, not trial counsel, has the ultimate say over whether to take a case to trial). Since a reasonable person would hire an attorney to help them present that claim to the courts, counsel should be appointed to assist a person without means to bring that same claim forward. *See Swader*, 143 Idaho at 655; I.C. § 19-4904.

The State's argument to the contrary is problematic because it ignores the fact that one of the tasks an appointed attorney is expected to perform in such cases is to *amend* or supplement the petition as appropriate. *See Charboneau v. State*, 140 Idaho 789, 794 (2004). Thus, post-conviction counsel is not necessarily limited to reframe or supplement the issues raised in the *pro se* petition, as the State seems to believe. (*See* Resp. Br., p.8.) In fact, this sort of assistance from post-conviction counsel is particularly expected when the only issue is, as it is here, the *pro se* petitioner's failure to include a procedural pleading requirement due to "the petitioner's own inexpert draftsmanship." *Johnson v. State*, 85 Idaho 123, 129 (1962) (internal quotation omitted). In cases such as this, where the *pro se* petitioner has made a claim for remedy that is beyond the scope of what the court is authorized to grant in the post-conviction context, the

appointed attorney could file an amended petition to address that procedural formality and identify a type of relief the court would be authorized to give.[1]

Basically, the State has forgotten Idaho's stated preference that cases should be resolved on their merits, and not "technical pleading requirements." *Dunlap v. State*, 141 Idaho 50, 57 (2004); *accord Seiniger Law Office, P.A. v. North Pacific Ins. Co.*, 145 Idaho 241, 247-48 (2008) (explaining this preference exists in regard to all the Rules of Civil Procedure). The mistaken claim for relief is not fatal to a claim of error, and certainly, it is not a basis to refuse to appoint counsel in the face of the possibility of an otherwise-valid claim of error. *See Swader*, 143 Idaho at 655 (noting that the standard for appointing counsel is lower than other standards in the post-conviction process). As such, this Court should vacate the order dismissing Ms. Eguilior's petition, which identified the possibility of a valid claim of error, and remand it for further proceedings after the appointment of counsel.

II.

The District Court Erred By Denying Ms. Eguilior's Motions For Appointment Of Counsel Because She Presented The Possibility Of A Valid Claim For Reconsideration Of The Judgment Under I.R.C.P. 60(b)(1)

A. The State's Argument About Whether Counsel Could Be Appointed Under I.R.C.P. 60(b) Was Not Preserved Below

The State asserts that this Court should affirm the district court's refusal to appoint counsel on Ms. Eguilior's Rule 60(b) motion under the doctrine of "right result, wrong reason," arguing for the first time on appeal that I.C. § 19-4904 only applies to the initial post-conviction petition, not a motion for reconsideration of the ruling on that petition. (Supp. Resp. Br., pp.7-9.)

[1] Even if post-conviction counsel did not remedy that technical error, the district court would still be duty-bound to craft whatever relief was ultimately appropriate on the facts shown at the evidentiary hearing, regardless of whether that amended petition requested the relief. I.R.C.P. 54(c).

That argument was not preserved below. (*See generally* Aug. (containing all the documents filed and arguments made in regard to Ms. Eguilior's Rule 60(b) motion). As the Idaho Supreme Court recently made clear, "issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented in the lower court." *State v. Cohagan*, 162 Idaho 717, ___, 404 P.3d 659, 663 (2017); *State v. Garcia-Rodriguez*, 162 Idaho 271, ___, 396 P.3d 700, 704 (2017). Because of that fundamental rule, the Supreme Court explained that the doctrine of "right result, wrong reason" only applies when the alternate reason was actually raised and argued below. *Garcia-Rodriguez*, 396 P.3d at 704-05.

Since the State did not argue that I.C. § 19-4904 was inapplicable in the Rule 60(b) context below, that argument is not properly before this Court on appeal. "'It is manifestly unfair for a party to go into court and slumber, as it were, on his defense, take no exception to the ruling, *present no point for the attention of the court*, and seek to present his defense that was never mooted before, to the judgment of the appellate court.'" *Id*. at 705 (quoting *Smith v. Sterling*, 1 Idaho 128, 131 (1867)) (emphasis added). Since that requirement applies equally to all parties on appeal, *id*., this Court should not consider the State's new argument on appeal.

B. Even Considering The State's New Argument On Appeal, I.C. § 19-4904 Applies To Motions For Reconsideration Under I.R.C.P. 60(b)

Even if this Court considers the State's new argument on appeal, it should reject it, as the Idaho Supreme Court has impliedly recognized that a defendant can request counsel be appointed in the context of a Rule 60(b) motion. *See Eby v. State*, 148 Idaho 731, 738 (2010). In *Eby*, the petitioner filed a Rule 60(b) motion alleging that there had been a complete absence of meaningful representation from his post-conviction counsel, which had resulted in the dismissal of his petition. *See id*. at 737. The Idaho Supreme Court agreed that he had established the

possibility of a valid claim under Rule 60(b), and so, remanded that case for further proceedings on his Rule 60(b) motion. *Id.* at 738.

The petitioner also requested the Supreme Court appoint new counsel to represent him on remand. *Id.* The Idaho Supreme Court explained: "Idaho Code § 19-4904 does authorize the appointment of counsel for indigent post-conviction petitioners. However, the decision to appoint counsel is left to the discretion of the trial court. The same is true for the substitution of appointed counsel." *Id.* (citing *Charboneau v. State*, 140 Idaho 789, 792 (2004)). As such, the Idaho Supreme Court was operating from the premise that a petitioner could properly request appointment of counsel on a Rule 60(b) motion under I.C. § 19-4904.[2] *See id.*

As such, a request for appointment of counsel on a Rule 60(b) motion should be approached in the same way as a request for appointment of counsel on the initial petition – it should be addressed before a ruling on the merits. *See Charboneau*, 140 Idaho at 793; *see, e.g.*, *McCabe v. State*, 2010 WL 9589681, *6 (Ct. App. 2010), *unpublished* (noting that, while the district court "may have erred by failing to address [a petitioner's] implicit request for appointment of counsel with respect to this Rule 60(b) motion," that error was not a basis for reversal because the motion itself was without merit).[3] As such, if Ms. Eguilior's Rule 60(b) motion had merit, her motion for counsel on that motion should have granted.

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[2] The *Eby* Court ultimately refused to consider the petitioner's request for appointment of new counsel because he had not argued that the district court had abused its discretion in denying his motion for substitute counsel on appeal. *Id.*

[3] *McCabe* is provided only as an example of how a learned court has applied that rule, not as controlling precedent dictating the same result in this case. *See Staff of Idaho Real Estate Comm'n v. Nordling*, 135 Idaho 630, 634 (2001) (quoting *Bourgeois v. Murphy*, 119 Idaho 611, 617 (1991)) ("When this Court had cause to consider unpublished opinions from other jurisdictions because an appellant had discussed the cases in his petition, we found the presentation of the unpublished opinions as 'quite appropriat[e].' Likewise, we find the hearing officer's consideration of the unpublished opinion, not as binding precedent but as an example, was appropriate.").

C. Ms. Eguilior's Motion For Reconsideration Had Merit Under I.R.C.P. 60(b)(1)

In her Rule 60(b) motion, Ms. Eguilior alleged she prepared a response to the district court's notice of intent to dismiss her petition and delivered it to the prison paralegal for filing. (Aug. pp.4, 24.) She asserted this happened within the statutory time to respond. (Aug. pp.2, 22; *see* Supp. Resp. Br., p.6 n.7 (conceding her attempted response was dated within the statutory period to respond).) Based on that, she requested the district court reconsider the judgment dismissing her petition because that judgment was premised on the district court's failure to consider her timely response to the notice of intent to dismiss. (Aug. pp.2, 22.) That presents *the possibility* of a valid claim under Rule 60(b)(1) because it indicates the district court dismissed her petition based on a mistake of fact as to when her response to the notice of intent was filed. *See Berg v. Kendall*, 147 Idaho 571, 576-77 (2009) (indicating that relief under Rule 60(b)(1) is appropriate when the court makes a mistake of fact in rendering judgment).

The State's arguments do not change that conclusion. For example, its point that the mail log Ms. Eguilior also proffered was for an irrelevant time period (Supp. Resp. Br., pp.15-16) is a red herring. Her allegations in the notarized affidavits about delivering the documents to the prison staff for filing are, by themselves, sufficient to establish *the possibility* of a valid claim. *See Mata v. State*, 121 Idaho 588, 593 (Ct. App. 1993). As such, even though the mail log is not for the relevant time period, Ms. Eguilior still alleged facts showing the possibility of a valid claim under Rule 60(b)(1).

Furthermore, the State's argument – that her attempted response did not address the issues in the notice of intent to dismiss (Supp. Resp. Br., p.16) – is disproved by the record. Ms. Eguilior sought to clarify her relief request, indicating she wanted the district court to "remov[e] my Rule 11 on my plea deal." (R., p.95.) That plea deal had been coerced by her trial

attorney's refusal to honor her decision to go to trial. (R., pp.8, 72.) True, her underlying reasons for wanting out of that plea agreement had to do with the sentence she received (*see* R., p.95), but that does not mean her clarified claim for relief did not address the [non]issue flagged in the notice of intent to dismiss. The claim for relief she sought to supplement into her petition was one within the district court's authority to grant under the post-conviction statutes. *See* I.C. § 19-4901.

As such, Ms. Eguilior identified *the possibility* of a valid claim under Rule 60(b)(1), and so, the district court erred by not appointing counsel on that motion.

D. Ms. Eguilior's Motion Was Timely Under I.C.R.P. 60(b)(1)

The State also contends this Court should ignore Ms. Eguilior's otherwise-valid claim of error because, by a strict application of Rule 60(b)'s statute of limitations, her motions for reconsideration were untimely under Rule 60(b)(1). (Supp. Resp. Br., pp.12-13.) That argument is mistaken because the principle of equitable tolling properly applies to motions brought under I.R.C.P. 60(b)(1).

As the United States Supreme Court has explained the doctrine, "[e]quitable tolling is applicable to statutes of limitations because their main thrust is to encourage the plaintiff to pursue his rights diligently and when an extraordinary circumstance prevents him from bringing a timely action, the restriction imposed by the statute of limitations does not further the statute's purpose." *CTS Corp. v. Waldburger*, ___ U.S. ___, 134 S. Ct. 2183 (2014). As such, the enactment of such statutes is not meant to "end every possible delay at all costs," as the State argues here. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Thus, even AEDPA's strict statute of limitation is not meant "to close courthouse doors that a strong equitable claim would ordinarily keep open." *Id.* To that point, the Idaho Supreme Court has explained that motions

for dismissal on the basis of statute of limitations are "generally viewed with disfavor." *Singleton v. Foster*, 98 Idaho 149, 151 (1977).

Thus, while the failure to file a motion with in the time identified by I.R.C.P. 60(c) will usually deprive the district court of authority to consider the motion,[4] strictly enforcing that limitation in the face of her strong equitable claim of error does not further the statute's overall purpose, which is to allow the district court to reconsider a judgment which was premised on a mistake of fact. *See Berg*, 147 Idaho at 576-77; *compare CTS Corp.*,134 S. Ct. at 2183; *see also Lytle v. Lytle*, 158 Idaho 639, 642 (Ct. App. 2015) (applying the principles of equitable tolling to a motion brought under Rule 60(b)(4)). If the mistake of fact cannot be discovered until after the period identified in the statute, the period of limitation would improperly override the purpose of the statute.

Certainly, though, reasonableness still factors into that evaluation, since the "reasonable time" provision, by the plain language of the rule, is not limited to certain aspects of Rule 60(b); it applies to all motions brought under that rule: "A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3), no more than 6 months after the entry of the judgment or order or the date of the proceeding." I.R.C.P. 60(c). Thus, where a petitioner could not bring an otherwise-viable claim within that statute of limitations due to no fault of her own, the principles of equitable tolling should be applied.

[4] This authority to consider the motion appears to be what the State is referring to as the "jurisdictional" bar. (*See* Resp. Br., p.12 (quoting *Miller v. Haller*, 129 Idaho 345, 348 (1996).) However, as the Court of Appeals has explained, the term "jurisdiction" only properly refers to the narrow areas of subject matter and personal jurisdiction, even though it has been colloquially, though inartfully, used, as the State has here, to refer to situations where the court does not have authority to act on a particular motion. *State v. Armstrong*, 146 Idaho 372, 374-77 (Ct. App. 2008).

That is the situation in Ms. Eguilior's case. She could not have discovered the error until the appellate record was prepared because she had timely delivered her response to the notice of intent to dismiss to the prison staff. (Aug. pp.2, 4, 22, 24; *see* R., p.31.) Since she had done what the law required her to do to get that document filed, she would have had no basis to believe her response had not been considered by the district court. *See Huizar v. Carey*, 273 F.3d 1220, 1224 (9th Cir. 2001) ("A private party, especially a petitioner, will be at a loss for what to do, other than wait, if the court fails to respond to such an inquiry."). However, the creation of the appellate record was similarly delayed because the prison staff failed to forward Ms. Eguilior's otherwise-timely notices of appeal to the court. (*See* R., p.124 (Corrected Order Conditionally Dismissing Appeals); Response to Conditional Dismissal (filed Oct. 28, 2016).) These repeated failures to timely forward Ms. Eguilior's filings to the court reveals a troubling pattern of delays caused by the prison staff which permeates Ms. Eguilior's post-conviction case. (*See* Supp. App. Br., p.6 n.3.)

Thus, Ms. Eguilior's case presents one of the circumstances where "commencement of the limitation period may be delayed until the petitioner discovers the facts giving rise to the claim." *See, e.g.*, *Schultz v. State*, 151 Idaho 383, 386 (Ct. App. 2011) (citing *Charboneau v. State*, 144 Idaho 900 (2007)). It is not as if she dallied upon learning those facts, as she filed her motions for reconsideration within six months of learning of the facts underlying the claim. (*See* Aug. pp.1-2, 21-22.) Since Ms. Eguilior's motion presents the possibility of a valid claim under Rule 60(b)(1), and since it should be considered timely-filed, the district court erred by denying her motion to appoint counsel. Therefore, this Court should vacate the order denying her motion and remand this matter for further proceedings.

III.

Alternatively, Whether The District Court Erred By Denying Ms. Eguilior's Motions For Appointment Of Counsel Because She Had Presented The Possibility Of A Valid Claim For Reconsideration Of The Judgment Under I.R.C.P. 60(b)(6)

The State's only argument in regard to Ms. Eguilior's contention that her Rule 60(b) motion should have been evaluated under Rule 60(b)(6) is that it was reasonable for the district court to consider it under Rule 60(b)(1) instead. (Supp. Resp. Br., p.14.) That argument, which the State has not supported with citations to authority (*see generally* Supp. Resp. Br., p.14), is actually contrary to the Idaho Supreme Court precedent on point.

Ms. Eguilior was contending that the district court should have considered her response to the notice of intent to dismiss to be timely under the prison mailbox rule, as she alleged she had delivered it to prison officials within the set time period. (*See* Aug. pp.2, 4, 22, 24.) Whether the mailbox rule applies is a question of law. *See Munson v. State*, 128 Idaho 639, 642 (1996). The Idaho Supreme Court has made it clear that questions of law cannot be considered under Rule 60(b)(1). *Berg*, 147 Idaho at 576-77. Furthermore, the Idaho Supreme Court has made it clear that Rule 60(b)(1) and 60(b)(6) are mutually exclusive, explaining that a claim which can be brought under one cannot be brought under the other. *Eby*, 148 Idaho at 736.

Since the question of law presented by Ms. Eguilior's motion cannot, as a matter of law, be considered under Rule 60(b)(1), the district court had no ability, reasonably or otherwise, to consider that claim under Rule 60(b)(1). Therefore, the State's only argument under Rule 60(b)(6) is meritless. Furthermore, since motions under Rule 60(b)(6) need only be brought in a reasonable time, which Ms. Eguilior did, and since she alleged the possibility of a valid claim under Rule 60(b)(6) (*see* Supp. App. Br., pp.13-16), the district court should have granted her motion to appoint counsel on that motion.

CONCLUSION

Ms. Eguilior respectfully requests this Court reverse the order dismissing her petition because it presented the possibility of a viable claim of error – that her trial counsel refused to honor her decision to take her case to trial – and remand these cases for further proceedings after appointment of counsel.

Alternatively, she respectfully requests this Court vacate the orders denying her motions for reconsideration and remand these cases for further proceedings after appointment of counsel to assist her in pursuing those motions

DATED this 10th day of January, 2018.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of January, 2018, 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:

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RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
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Administrative Assistant

BRD/eas