

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

11-7-2017

Eguilior v. State Respondent's Brief Dckt. 44518

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

Recommended Citation

"Eguilior v. State Respondent's Brief Dckt. 44518" (2017). *Not Reported*. 4188.
https://digitalcommons.law.uidaho.edu/not_reported/4188

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.

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.)	
)	

SUPPLEMENTAL 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**

**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

**BRIAN R. DICKSON
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712**

**PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division**

**MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEYS FOR
DEFENDANT-RESPONDENT**

**ATTORNEY FOR
PETITIONER-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUES	5
ARGUMENT	6
Eguilior Has Failed To Show That The District Court Erred By Denying Her Motion For Appointment Of Counsel To Represent Her On Her I.R.C.P. 60(b) Motion.....	6
A. Introduction.....	6
B. Standard Of Review	6
C. Applying The Correct Standard, Eguilior Was Not Entitled To Counsel To Represent Her On Her I.R.C.P. 60(b) Motion	7
D. In The Alternative, Even Applying The Standard Utilized By The District Court To Deny Eguilior’s Motions For Appointment Of Counsel, Eguilior Has Still Failed To Demonstrate Error.....	10
1. Eguilior’s I.R.C.P. 60(b)(1) Motion Was Untimely	12
2. The I.R.C.P. 60(b) Motion Was Frivolous And Did Not Raise The Possibility Of A Valid Claim For Relief	15
CONCLUSION.....	17
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Berg v. Kendall</u> , 147 Idaho 571, 212 P.3d 1001 (2009).....	6
<u>Charboneau v. State</u> , 140 Idaho 789, 102 P.3d 1108 (2004).....	6, 7, 8, 11
<u>Deiter v. Coons</u> , 162 Idaho 44, 394 P.3d 87 (2017).....	8
<u>Eby v. State</u> , 148 Idaho 731, 228 P.3d 998 (2010).....	15
<u>Gro–Mor, Inc. v. Butts</u> , 109 Idaho 1020, 712 P.2d 721 (Ct. App. 1985)	15
<u>Hust v. State</u> , 147 Idaho 682, 214 P.3d 668 (Ct. App. 2009)	7
<u>Lytle v. Lytle</u> , 158 Idaho 639, 350 P.3d 340 (Ct. App. 2015)	14
<u>Miller v. Haller</u> , 129 Idaho 345, 924 P.2d 607 (1996)	12, 15
<u>Nampa & Meridian Irr. Dist. v. Mussell</u> , 139 Idaho 28, 72 P.3d 868 (2003).....	8
<u>Newman v. State</u> , 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004)	11
<u>Plant v. State</u> , 143 Idaho 758, 152 P.3d 629 (Ct. App. 2007).....	6
<u>Rhoades v. State</u> , 148 Idaho 247, 220 P.3d 1066 (2009).....	13
<u>Silsby v. Kepner</u> , 140 Idaho 410, 95 P.3d 28 (2004)	15
<u>State v. Abdullah</u> , 158 Idaho 386, 348 P.3d 1 (2015).....	8
<u>State v. Hart</u> , 135 Idaho 827, 25 P.3d 850 (2001)	6
<u>Swader v. State</u> , 143 Idaho 651, 152 P.3d 12 (2007)	7, 9
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007).....	7
 <u>STATUTES</u>	
I.C. § 19-4904	7, 8, 9
I.C. § 19-4906(b).....	2

<u>RULES</u>	<u>PAGE</u>
I.R.C.P. 5(d)(1).....	12
I.R.C.P. 60(b)	passim
I.R.C.P. 60(c).....	12, 14

STATEMENT OF THE CASE

Nature Of The Case

Caroline Eguilior appealed from the district court's order summarily dismissing her post-conviction petition. After the Appellant's and Respondent's briefs were filed, the Idaho Supreme Court granted Eguilior's motion to file supplemental briefing on the issue of whether the district court abused its discretion by denying her motion for appointment of counsel to represent her on her I.R.C.P. 60(b) motion for relief from judgment.

Statement Of The Facts And Course Of The Proceedings

Pursuant to a plea agreement, Eguilior pled guilty to two counts of forgery, one count of unlawful possession of a firearm, and one count of robbery. (4/24/17 Aug., pp.15-31.¹) Pursuant to that agreement, the parties presented a joint sentencing recommendation, which the district court followed. (4/24/17 Aug., pp.15-31.)

Eguilior filed two post-conviction petitions in which she sought a new sentencing hearing. (R., pp.4-18, 68-82.) 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 into pleading guilty and for preventing her from taking the cases to trial. (R., pp.4-18, 68-82.)

¹ The Idaho Supreme Court granted Eguilior's motion to augment the appellate record with documents associated with the underlying criminal cases. (4/24/17 Order.) The district court had taken judicial notice of these documents in both of Eguilior's post-conviction cases that are the subject of this appeal. (R., p.23.) The state refers to the documents from this augmentation as "4/24/17 Aug."

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 new sentencing hearing, her post-conviction claims that did not implicate trial counsel’s performance with respect to her sentences were frivolous. (Id.) The court also concluded that the allegations that *did* relate to her sentences 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 concluding that the post-convictions claims were frivolous and “not ones that would be filed by a person who would retain counsel.” (R., p.24.) Three weeks later, after it did not receive any response from Eguilior to its notice of intent to dismiss,² the district court dismissed both petitions without further comment. (R., pp.27-28, 93-94.)

On appeal, Eguilior asserted that the district court erred by denying her motions for appointment of post-conviction counsel. (See generally Appellant’s brief.) In its Respondent’s brief, the state argued that Eguilior was not entitled to post-conviction counsel because she did not raise the possibility of a valid claim. (Respondent’s brief, pp.5-10.) Specifically, the state argued that, as the district court concluded, there was no causal connection between Eguilior's ineffective assistance of trial counsel claims and her requested relief of a new sentencing hearing, and that Idaho law did not require or permit appointment of counsel simply to direct or instruct a petitioner to seek different relief. (Id.) Further, the state argued that Eguilior was utilizing a post-conviction petition to

² Idaho Code § 19-4906(b) provides that a petitioner must be given the opportunity to, within 20 days, respond to a district court’s notice of intent to dismiss a post-conviction petition.

circumvent the plea agreement, in which she agreed to waive her rights to file a direct appeal or I.C.R. 35(b) motion. (Respondent's brief, p.6.)

While her appeal was still pending, and nearly 11 months after the district court dismissed her post-conviction-petitions, Eguilior filed an I.R.C.P. 60(b) motion for relief from judgment, with a supporting affidavit. (7/5/17 Aug., pp.1-6.³) Eguilior also requested the appointment of counsel to represent her on the motion. (7/5/17 Aug., pp.8-11.) In the motion, Eguilior asserted that she had prepared a response to the district court's notice of intent to dismiss, and that she presented this response to the prison paralegal for mailing within the required 20 days of the court's notice. (7/5/17 Aug., pp.1-2.) Eguilior further asserted that in March 2017, she became aware, through her appellate counsel, that her response to the court's notice of intent to dismiss was not actually received by the court until after her petitions had already been dismissed. (7/5/17 Aug., p.2.) Eguilior also reiterated, in her supporting affidavit, that the only relief she sought in the post-conviction proceeding was a new sentencing hearing, and that she otherwise "want[ed] to keep [her] plea deal." (7/5/17 Aug., pp.4-5.)

In Eguilior's untimely response to the district court's notice of intent to dismiss, which was filed approximately one week after the dismissal order was entered, Eguilior again confirmed that she was only seeking an opportunity to be re-sentenced, and that her mental health issues justified a different sentence. (R., pp.95-97.) Eguilior also discussed her post-conviction claims that her trial counsel was ineffective with respect to her guilty plea. (Id.)

³ The Idaho Supreme Court granted Eguilior's motion to augment the appellate record with documents associated with Eguilior's I.R.C.P. 60(b) motion. (7/5/17 Order.) The state refers to the documents from this augmentation as "7/5/17 Aug."

The district court denied both Eguilior's I.R.C.P. 60(b) motion and Eguilior's motion for appointment of counsel. (7/5/17 Aug., pp.41-48.) After citing the law setting forth the standards applicable to the appointment of counsel in post-conviction proceedings, the district court concluded that Eguilior was not entitled to appointed counsel on her I.R.C.P. 60(b) motion because the motion was frivolous. (Id.) Specifically, the court concluded that the motion was untimely and lacked merit. (Id.)

After the district court denied the I.R.C.P. 60(b) motion, Eguilior filed a motion for leave to file supplemental briefing with the Idaho Supreme Court in order to challenge the district court's denial orders. (6/30/17 Motion.) The Idaho Supreme Court granted the motion, and also permitted the state to file a Supplemental Respondent's Brief. (7/10/17 Order.)

ISSUES

Eguilior states the supplemental issues on appeal as:

1. 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).
2. 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).

(Supplemental Appellant's brief, p.4.)

The state rephrases the supplemental issue as:

Has Eguilior failed to show that the district court erred by denying her motion for appointment of counsel to represent her on her I.R.C.P. 60(b) motion?

ARGUMENT

Eguilior Has Failed To Show That The District Court Erred By Denying Her Motion For Appointment Of Counsel To Represent Her On Her I.R.C.P. 60(b) Motion

A. Introduction

Eguilior contends that the district court abused its discretion by denying her motion for appointment of counsel to represent her on her I.R.C.P. 60(b) motion seeking relief from the court's orders dismissing her post-conviction petitions. (See generally Supplemental Appellant's brief.) Eguilior's argument fails because she cannot demonstrate that she was entitled to appointed counsel in a post-conviction proceeding in which her post-conviction claims had already been dismissed. Further, even assuming that, under Idaho law, Eguilior would be entitled to counsel to represent her on her I.R.C.P. 60(b) motion if she had raised the possibility of obtaining relief on that motion, Eguilior failed to make such a showing.

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).

Decisions on Motions made pursuant to I.C.R.P. 60(b) are reviewed for an abuse of discretion. Berg v. Kendall, 147 Idaho 571, 576-578, 212 P.3d 1001, 1006-1008 (2009).

The meaning and effect of a statute is a question of law over which the appellate courts exercises free review. State v. Hart, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001).

C. Applying The Correct Standard, Eguilior Was Not Entitled To Counsel To Represent Her On Her I.R.C.P. 60(b) Motion

Idaho Rule of Civil Procedure 60(b) provides that a court may relieve a party from a final judgment, order, or proceeding for any of six specified reasons, including upon a showing of “mistake, inadvertence, surprise, or excusable neglect.” I.R.C.P. 60(b)(1).

In the context of a pending post-conviction proceeding, if the petitioner qualifies financially and “alleges facts showing the possibility of a valid claim” that would require further investigation on the petitioner’s behalf, the court must appoint post-conviction counsel to assist the petitioner in developing his or her *post-conviction claims*. Swader v. State, 143 Idaho 651, 654, 152 P.3d 12, 15 (2007); Charboneau, 140 Idaho at 793, 102 P.3d at 1112 (interpreting I.C. § 19-4904). If, on the other hand, the *claims in the petition* are so patently frivolous that there appears no possibility that they could be developed into a viable claim even with the assistance of counsel and further investigation, the court may deny the request 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); Hust v. State, 147 Idaho 682, 684, 214 P.3d 668, 670 (Ct. App. 2009).

The Idaho appellate courts have not interpreted I.C. § 19-4904 as providing a right to counsel to individuals pursuing an I.R.C.P. 60(b) motion after their post-conviction petition has already been dismissed. However, in this case, the district court presumed Eguilior was entitled to the appointment of counsel to represent her on her I.R.C.P. 60(b) motion if the *I.R.C.P. 60(b) motion* was not frivolous, and was a motion that a reasonable person with adequate means would be willing to bring at his own expense. (7/5/17 Aug., pp.42-43.) In other words, the district court presumed that the

Charboneau standard utilized to evaluate *post-conviction claims* after a petitioner files a motion seeking the appointment of counsel also applied to *I.R.C.P. 60(b) motions* if a former post-conviction petitioner sought counsel in a post-judgment relief proceeding under that statute. Utilizing this standard, the district court concluded that Eguilior was not entitled to counsel because her I.R.C.P. 60(b) motion was untimely and lacked merit. (7/5/17 Aug., pp.42-44.)

It is well-established that when the trial court “reaches the correct result by an erroneous theory,” the Idaho Supreme Court “will affirm the result on the correct theory.” Deiter v. Coons, 162 Idaho 44, 48, 394 P.3d 87, 91 (2017). See also State v. Abdullah, 158 Idaho 386, 417, 348 P.3d 1, 32 (2015) (“If a district court reaches the correct result by an erroneous theory, this Court will affirm the order upon the correct theory.”); Nampa & Meridian Irr. Dist. v. Mussell, 139 Idaho 28, 33, 72 P.3d 868, 873 (2003) (same).

The state submits that the Charboneau standard to determine whether a post-conviction petitioner is entitled to appointed counsel pursuant to I.C. § 19-4904 does not change simply because a former petitioner files an I.R.C.P. 60(b) motion after her petition is dismissed. Therefore, the state asserts, a former petitioner must show not merely that she has raised the possibility of a valid *I.R.C.P. 60(b) motion*, but instead must show, pursuant to I.C. § 19-4904, Charboneau, and other relevant case law, that evidence or

argument presented in the I.R.C.P. 60(b) motion creates the possibility of a valid, non-frivolous, *underlying post-conviction claim*.⁴

Idaho Code § 19-4904 is the sole source of the Idaho statutory right to post-conviction counsel. Swader, 143 Idaho at 653, 152 P.3d at 14. This statute applies, on its terms, to post-conviction “applicants,” and requires the appointment of counsel to represent such applicants, when qualified, “in the preparation of the application, in the trial court, and on appeal.” Therefore, the plain language of I.C. § 19-4904 does not entitle former post-conviction petitioners to appointed counsel to represent them in post-judgment motions. Such former petitioners who file I.R.C.P. 60(b) motions are not entitled to a back-door, second-chance, more-forgiving standard for the appointment of counsel after their post-conviction petitions have been dismissed.

In this case, the district court had already concluded that Eguilior was not entitled to counsel on her underlying post-conviction claims.⁵ (R., p.24.) Nothing in Eguilior’s I.R.C.P. 60(b) motion (7/5/17 Aug., pp.1-3), or in her untimely response to the district

⁴ The state’s argument assumes, without conceding, that pursuant to I.C. § 19-4904 and the interpreting case law, it is possible, though likely rare, for an individual to raise the possibility of a valid, non-frivolous, post-conviction claim through evidence and argument presented in an I.R.C.P. 60(b) motion after the post-conviction petition has already been dismissed.

⁵ For the purposes of this Supplemental Respondent’s brief, the state assumes, as it previously argued (see generally Respondent’s brief), that the district court properly denied Eguilior’s motions for appointment of counsel to represent her on her post-conviction petitions. Otherwise, if the district court did err, Eguilior would likely be entitled to relief on that issue, and the I.R.C.P. 60(b) motion and this supplemental briefing would be moot. Therefore, to demonstrate that the district court erred in denying her motion for appointment of counsel to represent her on her I.R.C.P. 60(b) motion, Eguilior must show that this motion, considered alone, entitles her to counsel under Idaho law.

court's notice of intent to dismiss (R., pp.95-97), transforms her dismissed post-conviction claims into non-frivolous claims that have the possibility of validity.

In her I.R.C.P. 60(b) motion, Eguilior asserted only that she presented her response to the district court's notice of intent to dismiss in a timely manner to the prison paralegal for mailing. (7/5/17 Aug., pp.1-3.) In her response to the court's notice of intent to dismiss, Eguilior likewise did not present additional evidence or argument relevant to the district court's proposed grounds for dismissal. (See R., pp.95-97.) Instead, Eguilior only reiterated or "clarified" the relief she sought, argued that her mental health issues warranted a lesser sentence, and discussed her post-conviction claim that her trial counsel was ineffective with respect to her guilty plea – a claim which the court had already concluded had no nexus to her requested relief of a new sentencing hearing. (Id.) Because Eguilior's *underlying post-conviction claims* had no possibility of validity, even considering Eguilior's I.R.C.P. 60(b) motion and response to the district court's notice of intent to dismiss, Eguilior was not entitled to appointed counsel.

Eguilior has failed to demonstrate that she was entitled to counsel to represent her on her I.R.C.P. 60(b) motion after her post-conviction petitions had already been dismissed. This Court should therefore affirm the district court's denial of Eguilior's motion for the appointment of counsel.

D. In The Alternative, Even Applying The Standard Utilized By The District Court To Deny Eguilior's Motions For Appointment Of Counsel, Eguilior Has Still Failed To Demonstrate Error

The district court concluded that Eguilior was not entitled to appointed counsel on her I.R.C.P. 60(b) motion because the motion was untimely and lacked merit, and

therefore was frivolous and did not “meet the requirement that with the assistance of counsel her claim could survive dismissal.” (7/5/17 Aug., pp.42-44.)

On appeal, as she did in her Appellant’s brief with respect to Eguilior’s post-conviction claims (Appellant’s brief, pp.5-6), Eguilior contends that the district court applied an incorrect standard by analyzing only whether Eguilior’s I.R.C.P. 60(b) motion was “frivolous,” and not whether Eguilior presented the *possibility* of a valid claim (Supplemental Appellant’s brief, pp.8-11). As it argued in its Respondent’s brief (Respondent’s brief, pp.9-10), this is a distinction without a difference in the circumstances of this case.

While the district court described Eguilior’s post-conviction claims and I.R.C.P. 60(b) motion as “frivolous,” it also cited the law applicable to motions to appoint counsel in post-conviction proceedings. (7/5/17 Aug., pp.42-43.) This included an acknowledgment that “the district court should consider that petitions filed by a *pro se* petitioner may be conclusory and incomplete”; that “[f]acts sufficient to state a claim may not be alleged because they do not exist or because the *pro se* petitioner does not know the essential elements of a claim” (7/5/17 Aug., p.43 (citing Charboneau, 140 Idaho at 792, 102 P.3d at 1111)); and that some claims “are so patently frivolous that they could not be developed into viable claims even with the assistance of counsel” (Id. (citing Newman v. State, 140 Idaho 491, 493, 95 P.3d 642, 644 (Ct. App. 2004)). The court also cited the relevant holding of Charboneau that if a petitioner “alleges facts to raise the possibility of a valid claim, the district court should appoint counsel in order to give the petitioner an opportunity with counsel to properly allege the necessary supporting facts.” (Id. (citing Charboneau, 140 Idaho at 793, 102 P.3d at 1112).) In light of these citations

to the applicable law, Eguilior cannot show that the court's subsequent description of her I.R.C.P. 60(b) claim as "frivolous" demonstrated the application of some incorrect standard.

Eguilior has also failed to show that the district court erred in concluding either that her I.R.C.P. 60(b) motion was untimely, or that it lacked merit and the possibility of validity. Eguilior has thus failed to demonstrate the possibility of a valid motion that would, under the standard utilized by the district court, entitle her to the appointment of counsel.

1. Eguilior's I.R.C.P. 60(b)(1) Motion Was Untimely

While Eguilior did not specify under which subsection of I.R.C.P. 60(b)(1) she was seeking relief (see 7/5/17 Aug., pp.1-6), the district court construed the motion as being raised pursuant to I.R.C.P. 60(b)(1), which permits a court to grant relief from a judgment upon a showing of "mistake, inadvertence, surprise, or excusable neglect" (7/5/17 Aug., p.44).

An I.R.C.P. 60(b)(1) motion must be "made...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). "[T]he time requirement set forth in Rule 60(b) is jurisdictional and may not be extended 'except to the extent and under the conditions stated' in the Rule itself." Miller v. Haller, 129 Idaho 345, 348, 924 P.2d 607, 610 (1996) (quoting I.R.C.P. 60(b)). The term "made," as used in the rule, requires that the motion be "filed prior to the six month time limit or is served within that time period and then filed 'within a reasonable time thereafter.'" Id. (quoting I.R.C.P. 5(d)(1)).

The district court's judgments dismissing Eguilior's post-conviction petitions were entered on July 6, 2016. (R., pp.27-28, 93-94.) Eguilior did not file her I.R.C.P. 60(b)(1) motion for relief from the judgment until almost 11 months later, on May 30, 2017. (7/5/17 Aug., pp.1-3.) Therefore, her motion was untimely and jurisdictionally barred, and the district court did not err in declining to appoint counsel.

In her I.R.C.P. 60(b)(1) motion, Eguilior asserted that she took nearly 11 months to file because she was not aware, until March 2017, that her response to the district court's notice of intent to dismiss was filed only after the post-conviction petition was already dismissed. (7/5/17 Aug., pp.1-6.) On appeal, Eguilior asserts that this should have tolled the I.R.C.P. 60(b)(1) statute of limitations. (Supplemental Appellant's brief, pp.5-8.) However, the six-month limitation period of I.R.C.P. 60(b)(1) is jurisdictional, and the statute does not provide for equitable tolling. While the Idaho appellate courts have recognized the applicability of equitable tolling in post-conviction proceedings, as a matter of due process, where "the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials," and where "mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction," Rhoades v. State, 148 Idaho 247, 220 P.3d 1066 (2009), Eguilior has made no such arguments in this case. Further, Eguilior has cited no case in which an Idaho appellate court has recognized the applicability of equitable tolling with respect to an I.R.C.P. 60(b)(1) motion, or a motion pursuant to the other I.R.C.P. 60(b) subsections that have the same six-month

statute of limitation.⁶ Eguilior therefore cannot show that equitable tolling applies in this case.

As an alternative argument, Eguilior contends that the district court erred by failing to construe Eguilior's I.R.C.P. 60(b) motion as an I.R.C.P. 60(b)(6) motion. (Supplemental Appellant's brief, pp.13-15.) Idaho Civil Rule of Procedure 60(b)(6) is a catch-all provision that permits a district court to grant an individual relief from a judgment for "any other reason that justifies relief." Such a motion is timely if it is made in a "reasonable time." I.R.C.P. 60(c). The state submits that Eguilior cannot demonstrate that the district court erred in construing her motion as falling under I.R.C.P. 60(b)(1). Eguilior did not specifically identify her motion as being made pursuant to any particular subsection, and it was entirely reasonable for the court to construe the motion as arguing that Eguilior was entitled to relief from her judgment due to a "mistake," specifically, the delay in the filing of Eguilior's response to the district court's notice of intent to dismiss.

Eguilior has failed to show that the district court erred in concluding that Eguilior's I.R.C.P. 60(b) motion was untimely, and therefore cannot show that the district court erred in concluding that Eguilior was not entitled to the appointment of counsel to pursue this motion.

⁶ Instead, Eguilior cites Lytle v. Lytle, 158 Idaho 639, 642, 350 P.3d 340, 343 (Ct. App. 2015), in which the Idaho Court of Appeals concluded that the district court should have considered only the amount of time that transpired from when Lytle first became aware of the judgment he sought relief from in considering whether his I.R.C.P. 60(b) motion was timely. However, Lytle's motion was brought pursuant to I.R.C.P. 60(b)(4), which, unlike I.R.C.P. 60(b)(1), requires only that the motion be made within a "reasonable time." I.R.C.P. 60(c). Whether an amount of time is "reasonable" in such a context requires an analysis of the facts and circumstances unique to each case, including such factors as an individual's knowledge of the basis of the motion. Lytle, 158 Idaho at 640-642, 350 P.3d at 341-343.

2. The I.R.C.P. 60(b) Motion Was Frivolous And Did Not Raise The Possibility Of A Valid Claim For Relief

Finally, even applying the standard set forth by the district court (that Eguilior was only entitled to counsel if her I.R.C.P. 60(b)(1) motion raised the possibility of a valid, non-frivolous claim), Eguilior has failed to show that the district court erred in concluding that she failed to make such a showing.

As noted above, I.R.C.P. 60(b)(1) permits a district court to grant relief from a judgment upon a showing of “mistake, inadvertence, surprise, or excusable neglect.” The mistake or inadvertence referred to in I.R.C.P. 60(b)(1) applies primarily to errors or omissions committed by an attorney or by the court that are not apparent in the record. Silsby v. Kepner, 140 Idaho 410, 411, 95 P.3d 28, 29 (2004). Any claim of mistake must be a mistake of fact and not a mistake of law. Gro-Mor, Inc. v. Butts, 109 Idaho 1020, 1023, 712 P.2d 721, 724 (Ct. App. 1985). “[A]lthough the court is vested with broad discretion in determining whether to grant or deny a Rule 60(b) motion, its discretion is limited and may be granted only on a showing of ‘unique and compelling circumstances’ justifying relief.” Eby v. State, 148 Idaho 731, 736, 228 P.3d 998, 1003 (2010) (citing Miller v. Haller, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)).

The state notes that, as the district court concluded (7/5/17 Aug, p.46), and as Eguilior acknowledges on appeal (Supplemental Appellant’s brief, p.10 n.4), the prison mail log that Eguilior attached to her I.R.C.P. 60(b) motion does not actually support her allegation that she presented the motion to the prison paralegal for mailing in a timely manner. Instead, the mail log shows only that Eguilior mailed *something* to the district

court clerk in July 2016 – a month *after* Eguilior’s response to the court’s notice of intent to dismiss was actually filed in the district court.⁷ (7/5/17 Aug., p.7.)

Further, Eguilior’s I.R.C.P. 60(b) motion was rooted only in an implicit request that the court grant her relief from the post-conviction judgment so that it could consider her response to the notice of intent to dismiss. (See 7/5/17 Aug., pp.1-6.) As discussed above, the untimely response did not allege any facts or include any arguments which effectively addressed the grounds for dismissal raised in the district court’s notice of intent to dismiss. Nor did Eguilior’s response otherwise strengthen her already-dismissed post-conviction claims. Therefore, neither Eguilior’s I.R.C.P. 60(b) motion, nor her response to the notice of intent to dismiss, raised the possibility that she was entitled to relief on either her I.R.C.P. 60(b) motion or her underlying post-conviction claims.

Eguilior has failed to show that the district court erred in concluding that her I.R.C.P. 60(b) motion was frivolous, and therefore she cannot show that the district court erred in denying her motion for the appointment of counsel to pursue this motion.

⁷ The state acknowledges that the response to the court’s notice of intent to dismiss was dated, by Eguilior, on July 1, 2016, which was several days before the 20-day period to respond expired. (See R., p.31.) However, it is unclear from the response when the motion was actually notarized, or when it was presented to the prison paralegal for mailing. (See *id.*)

CONCLUSION

The state respectfully requests that this Court affirm the district court's orders dismissing Eguilior's post-conviction petitions, the district court's order dismissing Eguilior's I.R.C.P. 60(b)(1) motion for relief from judgment, and the district court's orders denying Eguilior's motions for appointment of counsel.

DATED this 7th day of November, 2017.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of November, 2017, served a true and correct copy of the foregoing SUPPLEMENTAL 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