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# Hall v. State Respondent's Brief Dckt. 40471

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IN THE SUPREME COURT OF THE STATE OF IDAHO

KENT HALL,	)	
	)	Nos. 40471, 40472
Petitioner-Appellant,	)	
	)	Bannock Co. Case Nos.
vs.	)	CV-2012-3577, CV-2012-3578
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	

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BRIEF OF RESPONDENT

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

HONORABLE STEPHEN S. DUNN  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

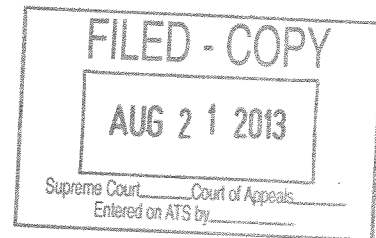
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## STATEMENT OF THE CASE

### Nature Of The Case

Kent Emmitt Hall appeals from the district court's order denying his request for appointment of counsel and summarily dismissing his petitions for post-conviction relief. On appeal, he argues that the district court erred in its conclusion that Hall failed to raise the possibility of a valid claim in his post-conviction petitions and that the district court abused its discretion by denying his motion for a continuance.

### Statement Of The Facts And Course Of The Proceedings

As related by the district court:

On December 14, 2011 Hall pled guilty to Possession of a Controlled Substance with Intent to Deliver, Methamphetamine, in Case No. CR-2011-08147 and Delivery of a Controlled Substance, Methamphetamine in Case No. CR-2011-8364, both in violation of I.C. §37-2732(a)(1)(A). On January 31, 2012, the Court sentenced the [sic] Hall to five (5) years fixed and seven (7) years indeterminate for a unified sentence of twelve (12) years in each case to be served concurrently with one another. Hall has appealed both cases to the Idaho Supreme Court, Docket No. 39676-2012, and is there awaiting a resolution.<sup>[1]</sup> Additionally, in May 2012, Hall filed Idaho Criminal Rule 35 motions in each of the cases, which this Court denied.

(R., pp.43-44, 121-22.)

Hall timely filed identical petitions for post-conviction relief in both cases. (R., pp.1-7, 79-85.) In those petitions, he alleged that (1) his guilty pleas were induced by the false promise that he would receive drug court, not a term of custody, and were

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<sup>1</sup> The Idaho Court of Appeals, in an unpublished opinion, affirmed Hall's judgments and convictions, and the district court's orders denying Rule 35 relief, in both cases. State v. Hall, Docket Nos. 39676 & 39677, 2012 Unpublished Op. No. 744 (Idaho App., November 28, 2012).

therefore not knowing or voluntary; (2) the state committed a Brady<sup>2</sup> violation, which involved the Idaho State Drug Lab allegedly corrupting his drug samples; and (3) his counsel was ineffective for not pursuing the Brady claim or filing a motion to withdraw Hall's guilty pleas on the basis of the Brady claim. (Id.) Hall requested appointment of counsel. (R., pp.24-26, 108-10.) The district court gave Hall notice of its intent to deny appointed counsel and dismiss the petitions for post-conviction relief on the ground that, based on the record of his underlying case, Hall had not raised the possibility of a valid claim. (R., pp.43-53, 121-31.) Hall moved for a continuance to issue a subpoena *deuces tecum* on the Idaho State Drug Lab to support his Brady claim. (R., pp.55, 133-35.) The district court denied the motion for continuance and dismissed Hall's petitions for post-conviction relief. (R., pp.55-56, 136-37.) Hall filed timely notices of appeal. (R., pp.58-60, 139-41.)

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<sup>2</sup> Brady v. Maryland, 373 U.S. 83 (1969).



## ISSUES

Hall states the issues on appeal as:

1. Did the district court err when it denied Mr. Hall's request for appointment of post-conviction counsel because his petition suggested, at a minimum, the possibility of a valid claim?
2. Did the district court abuse its discretion when it denied Mr. Hall's motion for a continuance because its reasoning in doing so was legally incorrect?

(Appellant's brief, p.6.)

The state rephrases the issues as:

1. Has Hall failed to establish an abuse of discretion in the district court's decision to deny him post-conviction counsel to pursue his frivolous petitions?
2. Has Hall failed to establish an abuse of the district court's discretion in denying his motion for a continuance?

## ARGUMENT

### I.

#### Hall Has Failed To Establish An Abuse Of Discretion In The Denial Of His Request For The Appointment Of Counsel To Pursue The Frivolous Claims Alleged In His Petitions For Post-Conviction Relief

##### A. Introduction

The district court denied Hall's motion for appointed counsel and summarily dismissed his petitions for post-conviction relief because "Hall [did] not raise the possibility of a valid claim." (R., pp.45-53, 123-31.) On appeal, Hall contends that the district court improperly denied his request for counsel, arguing that he raised three possibly valid claims. (Appellant's brief, pp.7-14.) Application of the correct legal standards to the facts of this case, however, clearly demonstrates that Hall did not raise even the possibility of a single valid claim.

##### B. Standard Of Review

A request for appointment of counsel in a post-conviction proceeding is governed by I.C. § 19-4904. "The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court." Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); see also Hust v. State, 147 Idaho 682, 683, 214 P.3d 668, 669 (Ct. App. 2009). In reviewing the denial of a motion for appointment of counsel in post-conviction proceedings, "[t]his Court will not set aside the trial court's findings of fact unless they are clearly erroneous. As to questions of law, this Court exercises free review." Charboneau, 140 Idaho at 792, 102 P.3d at 1111 (quoting Brown v. State, 135 Idaho 676, 678, 23 P.3d 138, 140 (2001)).

C. The District Court Properly Denied Hall's Request For Appointed Counsel To Pursue The Frivolous Claims Alleged In His Petitions For Post-Conviction Relief

There is no constitutional right to counsel in post-conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). While a district court may, pursuant to Idaho Code § 19-4904, appoint counsel for an indigent post-conviction petitioner in certain circumstances, the court is only required to appoint counsel when a petitioner “alleges facts showing the possibility of a valid claim that would require further investigation on the defendant's behalf.” Swader v. State, 143 Idaho 651, 654, 152 P.3d 12, 15 (2007); Charboneau, 140 Idaho at 793, 102 P.3d at 1112. In determining whether the alleged facts justify the appointment of counsel, “every inference must run in the petitioner’s favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts.” Charboneau, 140 Idaho at 793-94, 102 P.3d at 1112-13. However, where the claims in the petition are so patently frivolous that there is no possibility that they could be developed into a viable claim, with or without counsel’s assistance, the court may deny the request for counsel and proceed with the usual procedure for dismissing the meritless post-conviction petition. Workman v. State, 144 Idaho 518, 529, 164 P.3d 798, 809 (2007); Hust, 147 Idaho at 684, 214 P.3d at 670.

Review of the allegations contained in Hall’s petitions for post-conviction relief shows that he failed to allege facts showing the possibility of a valid claim. On appeal, Hall argues that he raised three possibly valid claims:

- (1) that his guilty pleas were not knowingly, intelligently, and voluntarily made because his attorney falsely promised him that he would receive probation and drug court,
- (2) that he was denied due process when the State failed to disclose exculpatory evidence regarding misconduct at the

crime laboratory prior to his guilty pleas, and (3) that his attorney was ineffective for failing to file a motion to withdraw his guilty pleas when Mr. Hall informed him about the *Brady* material.

(Appellant's brief, p.11.) As found by the district court, Hall's contention that his guilty pleas were involuntary is disproved by the record; Hall's other claims are based on a counterfactual. The district court, therefore, properly denied Hall's motion for counsel and dismissed his petitions for post-conviction relief.

1. Hall's Claim That His Guilty Pleas Were Involuntary Is Disproved By The Record

In his post-conviction petitions, Hall claimed that his guilty pleas were induced by a false promise of a lenient sentence. (R., pp.2-3, 6.) The district court noted that Hall's claims were "directly contradicted by the record." (R., p.47.) Claims for post-conviction relief are subject to summary dismissal "if the applicant's evidence raises no genuine issue of material fact" as to each element of the petitioner's claims. Workman, 144 Idaho at 522-23, 164 P.3d at 802-03 (citing I.C. § 19-4906). Allegations which are "clearly disproved by the record of the original proceedings" do not establish a genuine issue of material fact. Id. Where review of the petitioner's claims shows them to be frivolous, further investigation is not required and a district court may properly deny a request to appoint counsel. Id. at 529, 164 P.3d at 809. Therefore, if Hall's claim that his guilty pleas were "induced by false promises" is clearly disproved by the record, the district court properly denied his motion for counsel and dismissed his frivolous petitions for post-conviction relief.

Hall's claim that his guilty pleas were induced by the promise of receiving leniency at sentencing, in this case drug court rather than imprisonment, is clearly

disproved by the record. Prior to changing his pleas, Hall filled out a guilty plea advisory form. Hall attested that he answered all questions in the guilty plea advisory form “truthfully, correctly, and of [his] own free will,” that he had discussed the questions and answers with his attorney and understood them, and that no one threatened him to complete the form. (#39676 R.,<sup>3</sup> pp.66, 167.) Hall explained that he was pleading guilty to two charges pursuant to an agreement wherein the state would dismiss other charges including persistent violator enhancements. (Id., pp.63, 164.) Hall made no mention of any promise to be placed in drug court. Rather, Hall believed that he could be required to serve up to seven years for his possession of methamphetamine and a life sentence for his delivery of methamphetamine. (Id., pp.61, 162.) Hall acknowledged that his plea agreement was non-binding and that he understood:

This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above, which can be imposed without the possibility of probation and/or parole. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea.

(Id., pp.63, 164.) Finally, Hall attested that no one had “promised [him] that [he would] receive any special sentence, reward, favorable treatment, or leniency with regard to the plea” he planned to enter. (Id., pp.64, 165.)

At the change of plea hearing, the district court also conducted a colloquy with Hall to ensure that his guilty pleas were voluntary. The district court had the parties put the terms of the plea agreement on the record: that Hall would plead guilty to both the possession and delivery of methamphetamine charges in exchange for the state

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<sup>3</sup> Contemporaneous with the filing of this brief, the state filed a motion requesting the Court to take judicial notice of the record in the underlying criminal case.

dismissing a delivery of marijuana charge and two persistent violator enhancements and limiting its sentencing recommendation to that of the PSI. (#39676 12/12/2011 Tr., p.4, L.19 – p.5, L.21.) The district court ensured that Hall understood the guilty plea questionnaire and that his answers were truthful (id., p.6, L.19 – p.7, L.6), that Hall did not suffer from any mental disease or disorder and was not under the influence of drugs or medications (id., p.7, Ls.9-21), and that Hall was satisfied with his attorney's representation and understood that, by pleading guilty, Hall was waiving his constitutional rights (id., p.7, L.22 – p.8, L.4). The district court then asked:

THE COURT: And has anyone threatened you or done anything to make you enter this plea against your will?

THE DEFENDANT: No, sir.

THE COURT: Has anyone made you any kind of special promise for leniency or special sentence other than what the attorneys have stated on the record today?

THE DEFENDANT: No, Your Honor.

THE COURT: You understand that the agreement that they've reached is not binding on this court. That means regardless of what the attorneys recommend, either your attorney or the state, I'm not bound by that agreement. I can impose upon you whatever sentence I feel is appropriate after reviewing the PSI even if it's different from what they say; do you understand that?

THE DEFENDANT: I understand that.

THE COURT: Which means I could impose upon you the maximum penalty which in the possession of meth with intent to deliver is not more than life—oh, it is in both cases, not more than life; do you understand that?

THE DEFENDANT: I understand, Your Honor.

THE COURT: So that's still hanging over your head now even though the state has agreed to recommend no more than whatever the PSI recommends; do you understand that?

THE DEFENDANT: I understand.

(Id., p.8, L.5 – p.9, L.8.) Hall's claim that his guilty pleas were induced by the promise of drug court is thus clearly disproved by the record and the district court properly dismissed it without appointing counsel.

On appeal, Hall argues that "the district court erred when it concluded, based solely on its review of the guilty plea questionnaire, that Mr. Hall had failed to raise even the possibility of a valid claim" regarding the voluntariness of his pleas. (Appellant's brief, p.12.) The district court, however, did not base its conclusion "solely on its review of the guilty plea questionnaire." Rather, it reached its conclusion "pursuant to Hall's Guilty Plea Questionnaire *and the colloquy the Court conducted at the change-of-plea hearing.*" (R., pp.48, 126 (emphasis added).) Reviewing the record below, the district court's finding "that Hall's guilty pleas were knowingly and voluntarily given and that no promise had been made to him beyond the plea agreement" is irrefutable. The district court properly dismissed this frivolous claim without appointing counsel.

## 2. Hall's Additional Claims Cannot Be Substantiated

Hall further argues that "the State failed to disclose exculpatory evidence concerning misconduct at the crime laboratory," and that "his attorney refused to file a motion to withdraw his guilty plea [sic] upon being apprised of the *Brady* material by Mr. Hall." (Appellant's brief, pp.12-14.) Hall's argument, that there was a Brady violation at all, is based on a counterfactual.

As noted in the letters from the Idaho State Police attached to Hall's petition for post-conviction relief, beginning sometime in 2003 and lasting until late February 2011, forensic analysts at the Pocatello branch of the Idaho State Drug Lab maintained an unauthorized quantity of narcotics used for display purposes. (R., pp.8-10, 86-88.) The analysts kept all of the documentation regarding the narcotics and all of the narcotics were completely accounted for. (R., pp.10, 88.) These letters, containing all of the above information, were published on May 3, 2011. (R., pp.8-10, 86-88.) Hall, however, was not arrested until May 20, 2011. (R., pp.13, 91.) He pleaded guilty on December 12, 2011, and was sentenced on January 30, 2012. (R., pp.12, 90.)

"[T]he Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense." Kyles v. Whitley, 514 U.S. 419, 436-37 (1995). Rather, under Brady and its progeny, the state is only required to provide information which is material to the defendant's case. Id. at 432 (citing Brady, 373 U.S. at 87); see also Strickler v. Greene, 527 U.S. 263, 281-82 (1999). A nondisclosure is only material "when prejudice to the accused ensues ... [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler, 527 U.S. at 281-82. Information regarding malfeasance at the Pocatello branch of the Idaho State Drug Lab spanning a time period from 2003 to February 2011, before Hall was even arrested for his drug violations, is in no way relevant to Hall's case, much less material. Therefore, there can be no possibility of a Brady violation in this case.

Moreover, where the evidence presented by Hall clearly shows that the "display drugs" were documented and completely accounted for (see R., pp.10, 88), even had



there been some overlap between the malfeasance and Hall's case (which there is not), this evidence still could not possibly be exculpatory. At best, this evidence would be merely impeaching. As the Court has previously noted, "the United States Constitution does not require the State to disclose material impeachment information prior to entering a plea agreement with the defendant." Dunlap v. State, 141 Idaho 50, 64, 105 P.3d 376, 390 (2004) (citing United States v. Ruiz, 536 U.S. 622, 629 (2002)). Such evidence fails the test of materiality because "impeachment information is special in relation to the *fairness of a trial* not in respect to whether a plea is *voluntary*." Id. (emphasis original). Hall pleaded guilty in this case. Therefore, any failure to disclose evidence which is, at best, impeaching cannot be a Brady violation in this case.

The fact that there cannot possibly be a Brady violation in this case also makes it impossible for Hall to prove his claim of ineffective assistance of counsel for failing to bring a motion to withdraw his guilty pleas based on the nonexistent Brady violation. Where the petitioner alleges entitlement to relief based upon ineffective assistance of counsel, in order to prevail, the petitioner must show that his attorney's performance was objectively deficient and that he was prejudiced by that deficiency. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Aragon v. State, 114 Idaho 758, 760-61, 760 P.2d 1174, 1176-77 (1988). In the context of a claim that trial counsel was ineffective for failing to file a motion to suppress, "a conclusion that the motion, if pursued, would not have been granted by the trial court is generally determinative on both prongs of the Strickland test." Hoffman v. State, 153 Idaho 898, 904, 277 P.3d 1050, 1056 (Ct. App. 2012) (citing Bowman v. State, 129 Idaho 520, 526, 927 P.2d 910, 916 (Ct. App. 1996)). A motion to withdraw Hall's guilty pleas based on a Brady violation, which could not

possibly have occurred under the facts of this case, would have been frivolous. Hall, therefore, cannot possibly show that his attorney was ineffective for failing to bring the frivolous motion.

As Hall notes on appeal, one of the grounds for the district court's ruling was apparently that Hall's valid guilty pleas operated as a waiver of all non-jurisdictional defects, and therefore Hall could not bring his claims of a Brady violation and ineffective assistance of counsel. (Appellant's brief, pp.12-14.) While it is true that this was one of the grounds articulated by the district court in favor of dismissal of Hall's ancillary claims, it was not the only basis on which the district court dismissed these claims. Regarding Hall's claim of a Brady violation, the district court also noted that Hall "failed to show how the incidents at the lab are remotely relevant to the testing of the drugs in Hall's case." (R., pp.50, 128.) As noted above, because the incidents are not remotely related, there is no possibility that they can be material as required by Brady. Regarding Hall's ineffective assistance of counsel claim, the district court noted that a motion to withdraw the guilty pleas based on "the incidents at the ISP forensics lab," which were irrelevant to Hall's case, would be frivolous. (R., pp.52-53, 130-31.) This was especially true in light of Hall's admissions to law enforcement and a corroborating field test. (Id.)

As demonstrated above, because there was no possibility of a Brady violation in this case, these alternative grounds articulated by the district court in favor of dismissal are correct. Hall, however, does not challenge these grounds on appeal. Where a basis for a trial court's ruling is not challenged on appeal, an appellate court will affirm on the unchallenged basis. State v. Goodwin, 131 Idaho 364, 366, 956 P.2d 1311,

1313 (Ct. App. 1998). This Court, therefore, must affirm the district court on the unchallenged basis that the alleged "Brady material" was not relevant to Hall's case (and thus not Brady material), and any motion based on the nonexistent Brady violation now claimed by Hall would be frivolous.

## II.

### Hall Has Failed To Establish An Abuse Of The District Court's Discretion In Denying His Motion For A Continuance

#### A. Introduction

The district court denied Hall's motion for a continuance. (R., pp.55-56, 136-37.) On appeal, Hall argues that the district court abused its discretion "because the basis for its decision was legally incorrect." (Appellant's brief, pp.14-16.) Application of the relevant law to the facts of this case, however, shows that the district court did not abuse its discretion by denying the continuance because Hall has failed to establish that his substantial rights were prejudiced due to the denial of his motion for a continuance.

#### B. Standard Of Review

The decision to grant or deny a continuance rests within the sound discretion of the trial court. State v. Nunez, 133 Idaho 13, 21, 981 P.2d 738, 746 (1999); State v. Hudson, 129 Idaho 478, 481, 927 P.2d 451, 454 (Ct. App. 1996). "Unless an appellant shows that his substantial rights have been prejudiced by reason of a denial of his motion for continuance, appellate courts can only conclude that there was no abuse of discretion." Nunez, 133 Idaho 13, 21, 981 P.2d 738, 746 (1999) (citing State v. Laws, 94 Idaho 200, 203, 485 P.2d 144, 147 (1971)).

C. Hall Has Failed To Show That His Substantial Rights Were Prejudiced By The Denial Of His Motion For A Continuance

Hall contends that the district court abused its discretion by denying his motion for a continuance, arguing that he was denied his substantive right to further investigate his alleged Brady violation. (Appellant's brief, pp.14-16.)

As noted above, Hall's claim of a Brady violation is based on a counterfactual. The letters from the Idaho State Police, attached to Hall's petition for post-conviction relief, detail that from sometime in 2003 until February 2011, forensic analysts at the Pocatello branch of the Idaho State Drug Lab maintained an unauthorized quantity of narcotics used for display purposes. (R., pp.8-10, 86-88.) The analysts kept all of the documentation with the narcotics and all of the narcotics were completely accounted for. (R., pp.10, 88.) These letters, containing all of the above information, were published on May 3, 2011. (R., pp.8-10, 86-88.) Hall, however, was not arrested until May 20, 2011. (R., pp.13, 91.) He pleaded guilty on December 12, 2011, and was sentenced on January 30, 2012. (R., pp.12, 90.)

As explained above, under Brady and its progeny, the state is only required to provide information which is material to the defendant's case. Kyles v. Whitley, 514 U.S. 419, 432 (1995) (citing Brady, 373 U.S. at 87); Strickler v. Greene, 527 U.S. 263, 281-82 (1999). Information regarding malfeasance at the Pocatello branch of the Idaho State Drug Lab relegated to the timeframe of 2003 to February 2011, which predated Hall's arrest, is in no way relevant to Hall's case, much less material. Therefore, there can be no Brady violation in this case. Because there is no possibility of a Brady violation under the circumstances of this case, there is nothing for Hall to further investigate. Hall's substantial rights, therefore, cannot be prejudiced by the denial of his


meritless motion for a continuance, and Hall has failed to show that the district court abused its discretion by denying the motion.

On appeal, Hall contends that the district court's reasoning for denying his motion for a continuance, that Hall's guilty plea waived any nonjurisdictional defects in his case, was legally incorrect. (Appellant's brief, pp.14-16.) Even if the district court's reasoning is incorrect, its ultimate ruling should still be affirmed. This Court will affirm an ultimately correct ruling made on an incorrect legal analysis by applying the correct legal analysis. Row v. State, 135 Idaho 573, 579, 21 P.3d 895, 901 (2001). Because there can be no Brady violation in relation to the Idaho State Drug Lab under the circumstances of this case, there is no purpose to be served in granting Hall's continuance to further investigate his nonexistent claim. Hall was not prejudiced by the denial of his motion for a continuance to allow him to file a frivolous subpoena *deuces tecum*. The district court's ultimate denial of Hall's motion for a continuance should be affirmed.

#### CONCLUSION

The state respectfully requests that this Court affirm the district court's orders denying Hall's motion for post-conviction counsel and dismissing his frivolous petitions for post-conviction relief.

DATED this 21st day of August, 2013.

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of August, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

A handwritten signature in black ink, appearing to read "Russell J. Spencer", written over a horizontal line.

RUSSELL J. SPENCER  
Deputy Attorney General

RJS/pm