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IN THE SUPREME COURT OF THE STATE OF IDAHO

CRYSTAL ELIZABETH)	
TURNER,)	NO. 44911
)	
Petitioner-Appellant,)	
)	TWIN FALLS COUNTY NO.
v.)	CV42-16-286
)	
STATE OF IDAHO,)	APPELLANT’S REPLY BRIEF
)	
Respondent.)	
_____)	

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 G. RICHARD BEVAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Crystal Elizabeth Turner appeals from the district court's judgment summarily dismissing her amended petition for post-conviction relief. In her opening brief, Ms. Turner asserted the district court erred by dismissing two of her claims of ineffective assistance of counsel. This Reply Brief responds to the State's position that one of Ms. Turner's arguments on appeal was unpreserved below and unsupported on appeal. For all other issues, Mr. Turner respectfully refers to her Appellant's Brief.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were stated in Ms. Turner's Appellant's Brief. (App. Br., pp.1-4.) They are not repeated here, but are incorporated by reference.

ISSUE

Did the district court err when it summarily dismissed Ms. Turner's amended petition for post-conviction relief?

ARGUMENT

The District Court Erred When It Summarily Dismissed Ms. Turner's Amended Petition For Post-Conviction Relief

This Reply Brief responds to the State's position that Ms. Turner argued a new issue for the first time on appeal and did not sufficiently argue this new issue. (Resp. Br., pp.5–7.)

In Ms. Turner's opening brief, she identified two claims of ineffective assistance of counsel that established genuine issues of material fact and thus required an evidentiary hearing.

Those claims were:

[1] The guilty plea was not made freely and voluntarily. Your Petitioner insisted on a jury trial; however, trial counsel threatened to withdraw from your Petitioner's case if she did not enter into the proposed plea agreement. Your Petitioner was put under a great deal of pressure by trial counsel and became confused and did not have enough time to consider her options or consider obtaining new counsel.

[2] Ineffective assistance of counsel. Co-Defendant William McGrath threatened to [sic] your Petitioner with bodily harm at the site of the crime and also threatened that he would harm my children. There is a letter with such threats that I provided to trial counsel, yet they were never used in my defense or in mitigation. Additionally, I informed trial counsel that a gun was pointed at my head at the scene of the crime but such facts were not used in my defense or mitigation. Such admissions constitute ineffective assistance of counsel.

(R., pp.60–61.) Essentially, her first claim was that her counsel was ineffective for coercing her to plead guilty by threatening to withdraw from the case, and her second claim was that her counsel was ineffective for failing to utilize the threats made by her co-defendant in her defense or in mitigation.

On appeal, Ms. Turner twice characterized the second claim as a failure to "investigate" the co-defendant's threats. (App. Br., pp.6, 8.) Herein lies the issue. The State argues Mr. Turner did not claim in the district court that her trial counsel failed to investigate the threats. (Resp. Br., pp.5–6.) Rather, the State emphasizes that trial counsel knew of these threats since

Ms. Turner alleged in her petition that she had told her trial counsel about them, but trial counsel did nothing. (Resp. Br., pp.5–6.) Therefore, the State contends an ineffective assistance of counsel claim for the failure to investigate was not raised below and therefore cannot be argued on appeal. (Resp. Br., pp.5–6.)

The State’s position is well taken. Mr. Turner’s ineffective assistance of counsel claim was not, strictly speaking, a failure to investigate. Trial counsel knew, to some extent, about the co-defendant’s threats to Ms. Turner (yet trial counsel pressured her to plead guilty anyways). The misuse on appeal of the word “investigate” to describe trial counsel’s deficient performance was unintended. That being said, part and parcel of the proper way for trial counsel to use the information from Ms. Turner regarding the threats would be to investigate them further. Effective counsel certainly would want to gather more information and confirm those threats. Instead, according to Ms. Turner, trial counsel threatened her too. He told her that he would withdraw if she did not plead guilty, despite knowing she was threatened by her co-defendant during and after the commission of the crime. Therefore, while “investigate” may have not been the most artful way to characterize Ms. Turner’s ineffective assistance of counsel claim, the substance of Ms. Turner’s claims below and on appeal remain the same. Ms. Turner’s counsel was ineffective for threatening to withdraw from the case if she did not plead guilty and also for failing to utilize her assertions that her co-defendant threatened her during and after the crime. These claims were raised below, and the issue pertaining to these claims on appeal—that the district court erred by summarily dismissing these claims due to the genuine issues of material

fact—were supported by adequate argument and authority in Ms. Turner’s opening brief. ¹ (See App. Br., pp.6–12.)

CONCLUSION

Ms. Turner respectfully requests that this Court vacate the district court’s judgment and summary dismissal of her amended petition for post-conviction relief and remand this case to the district court for an evidentiary hearing.

DATED this 21st day of November, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

¹ Because Ms. Turner is not asserting on appeal a new or different “investigation” ineffective assistance of counsel claim than her claim raised below, it is not necessary to address the State’s alternative argument that she waived this issue on appeal, assuming this was a new or different claim. (See Resp. Br., pp.6–7.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of November, 2017, 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:

CRYSTAL ELIZABETH TURNER
INMATE #117206
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G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
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JCS/eas