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IN THE SUPREME COURT OF THE STATE OF IDAHO

LUIS ENRIQUE GONZALEZ,)	
)	NO. 45074
Petitioner-Appellant,)	
v.)	TWIN FALLS CO. NO. CV42-17-855
)	
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 RANDY J. STOKER
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUES PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
I. The District Court Erred When It Held That Mr. Gonzalez’s Petition For Post-Conviction Relief Was Untimely	3
CONCLUSION.....	5
CERTIFICATE OF MAILING	6

STATEMENT OF THE CASE

Nature of the Case

Luis Enrique Gonzalez appeals from the district court's order summarily dismissing his petition for post-conviction relief. He submits that the district court erred by ruling that his petition was untimely and by denying his motion for appointment of counsel. This Reply Brief addresses the State's contention that the petition was untimely.

Statement of the Facts and Course of Proceedings

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

ISSUES

- I. Did the district court err when it held that Mr. Gonzalez's petition for post-conviction relief was untimely?
- II. Did the district court err by denying Mr. Gonzalez's motion for appointment of counsel because he raised the possibility of a valid claim?

ARGUMENT

I.

The District Court Erred When It Held That Mr. Gonzalez's Petition For Post-Conviction Relief Was Untimely

The State raises three arguments in an attempt to demonstrate that the petition in this case is untimely: 1) this Court lacks jurisdiction to consider petitioner's argument; 2) the record does not establish that the July 18, 2016 filing was sufficient to open a post-conviction case; and 3) Mr. Gonzalez's argument is irrelevant. (Respondent's Brief, pp.9-10.) Each will be addressed in turn.

The State's jurisdictional argument is, essentially, that because the initial petition was filed in the underlying criminal case, and not this post-conviction case, this Court lacks jurisdiction to consider Mr. Gonzalez's argument. (Respondent's Brief, p.9.) The State asserts that "the record in this case shows only a petition filed on February 27, 2017" and contains no other petition. (Respondent's Brief, p.9.) The State also asserts that the only evidence of another petition is in a motion to augment with the register of action in the criminal case. (Respondent's Brief, p.9.) Mr. Gonzalez has indeed filed a motion requesting that the Court take judicial notice of the register of action in the underlying criminal case, which was granted. (*See Order Granting Motion Requesting That The Court Take Judicial Notice*, filed on November 21, 2017.) But the State is incorrect that Mr. Gonzalez is attempting to appeal from the criminal case. There is, of course, no appealable order on the post-conviction petition in the underlying criminal case. Thus, Mr. Gonzalez is appealing from the order summarily dismissing the petition in this case, and is asserting that the court erred by determining that his petition was untimely. His argument is simply that the court should have considered his petition as timely filed on July 18, 2016 once

it discovered the error in filing. This appeal is timely from the order summarily dismissing the petition.

Second, the State asserts that the record is insufficient to show that what Mr. Gonzalez filed in the district court was sufficient to initiate a post-conviction action. (Respondent's Brief, p.9.) The register of action in the underlying criminal case shows that a Petition for Post Conviction Relief and Supporting Affidavit, as well as a Motion for Appointment of Public Defender, was filed on July 18, 2016. (*See* ROA in the underlying criminal case.) Further, the district court itself noted that Mr. Gonzalez had filed a petition for post-conviction relief in the criminal case on July 18, 2016. (R, p.11 n.1.) Mr. Gonzalez submits that the record is sufficient to demonstrate that he filed a petition for post-conviction relief on July 18, 2016.

Finally, the argument is not irrelevant. In his response to the notice of intent to dismiss, Mr. Gonzalez argued that he had in fact filed a petition on July 18, 2016, and therefore his petition should be considered timely. He submits on appeal that it was error for the district court to conclude otherwise. A clerical mistake, either by Mr. Gonzalez or the court clerk, should not defeat the filing of a timely petition. All Mr. Gonzalez is requesting is that his July 18, 2016 petition be treated as a petition. Once the district court realized that a petition was filed on July 18, 2016 and filed in the wrong case number, it should have treated the petition as timely and opened this post-conviction case.

Mr. Gonzalez submits that, because his July 18, 2016, petition for post-conviction relief and motion for appointment of counsel were clearly in substance a petition for post-conviction relief and a motion for appointment of counsel, the district court should have considered them timely filed once the clerical error was discovered and a civil case was opened.

CONCLUSION

Mr. Gonzalez requests that this court rule that his petition for post-conviction relief is timely. He further requests that his case be remanded for appointment of counsel on his petition for post-conviction relief.

DATED this 1st day of February, 2018.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of February, 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

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas