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Dixon v. State Appellant's Reply Brief Dckt. 39745

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DANIEL LEE DIXON,)	
)	
Petitioner-Appellant,)	S.Ct. No. 40761
)	39745
vs.)	
)	D.Ct. No. 2008-5912
STATE OF IDAHO,)	(Kootenai County)
)	
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the First
Judicial District of the State of Idaho
In and For the County of Kootenai

HONORABLE FRED M. GIBLER
Presiding Judge

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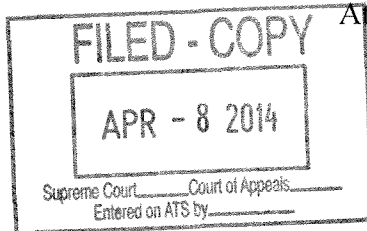


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II. ARGUMENT IN REPLY

A. **The District Court Erred in Denying Mr. Dixon's Petition for Post-Conviction Relief Because He Established That He Received Ineffective Assistance of Counsel**

1. **Mr. Dixon proved that he received ineffective assistance of counsel due to counsel's failure to object to the jury trial being held in the county jail**

To reach the courtroom in which Mr. Dixon's trial was held, the jury entered a jail surrounded by razor-wire, passed through jail security and sat behind a glass wall to protect the jury from inmates. Tr. (39745) p. 53, ln. 1-7; Post Trial Briefing in Support of Post-Conviction Relief p. 6-7; Affidavit of Staci Anderson,¹ ¶ 3. This setting constantly reminded the jury of Mr. Dixon's alleged dangerousness and deprived the process of dignity and neutrality essential to the integrity of the trial process. Accordingly, the trial setting was inherently prejudicial in violation of Mr. Dixon's right to due process and he was prejudiced by trial counsel's failure to object to the trial setting.

In arguing to the contrary, the state claims the jail courtroom's physical appearance was not presented to the district court and, thus, there was no evidence that the jail courtroom in Kootenai County was similar to arrangements found unconstitutional in other jurisdictions. Respondent's Brief p. 10. The state also argues that trial counsel was not required to challenge the arrangement because there was no Idaho case on point and, in any event, the district court would have denied any motion to change the trial's location.

However, the district court and parties were quite familiar with the jail courtroom and its physical appearance was thus implicitly judicially noticed by the district court. Further, an objection to the trial setting would have been supported by existing precedent and multiple cases

¹ This affidavit is the subject of a contemporaneously filed request for judicial notice.

from other jurisdictions. Because a jury trial cannot be held within a correctional setting unless there are substantial safety concerns justifying the location, the district court would have erred in denying a motion to change the location. Accordingly, the district court erred in denying Mr. Dixon's petition for post-conviction relief.

a. the jail courtroom's physical appearance was considered by the district court and appropriately considered by this Court on appeal

The state notes that the only description of the jail courtroom's physical appearance in the appellate record is in post-conviction counsel's argument in post-hearing briefing. Respondent's Brief, p. 10. The state thus contends that there was "no basis by which the court could conclude that the location of Dixon's trial contained the same hallmarks of prejudice that were evident in" cases finding courtrooms in jails unconstitutional. *Id.*

However, as the state also acknowledged, it is evident that the district court was quite familiar with the jail courtroom having "tried several criminal cases" in that location. Respondent's Brief, p. 10, ln.4; see also R (39745) 90. The district court and parties were already familiar with the jail courtroom's appearance and it was thus unnecessary to present evidence of the jail courtroom's physical appearance for the district court's consideration. Because Mr. Dixon's counsel argued the jail courtroom's appearance and the district court referenced its familiarity with that location in its opinion, the appellate record establishes that the jail courtroom's physical appearance was considered by the district court in determining Mr. Dixon's claim.

Moreover, a court may take judicial notice of facts that are "not subject to reasonable dispute" because they are either "(1) generally known within the territorial jurisdiction of the trial

court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” I.R.E. 201(b). The jail courtroom’s physical appearance was known by the district court and the parties and its relevance was argued by Mr. Dixon’s counsel. The district court then referenced its own experience in the courtroom in its written findings. The district court thus implicitly took judicial notice of the jail courtroom’s appearance.

Because the district court considered the jail courtroom’s appearance in determining Mr. Dixon’s claims, it is appropriate for this Court to also consider that appearance. While the jail courtroom’s appearance is not “generally” known to this Court, its basic characteristics are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned” within the meaning of Rule 201(b)(2). Specifically, Ms. Anderson’s affidavit verifies that the physical description argued by post-conviction counsel is accurate. Further, the official website for the Kootenai County District Court explains that the “two main court buildings for Kootenai County are located in the Courthouse Complex at the corner of Government Way and Garden Ave. in Coeur d’Alene.” Request for Judicial Notice, Exh. A. Courtrooms one through eleven are at this location. *Id.* Conversely, courtroom twelve is located approximately three miles away in the Public Safety Building in the jail on the county sheriff’s campus. Request for Judicial Notice, Exh. A & B. The information on these websites and the description provided by Ms. Anderson are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

Moreover, this information establishes that the jail courtroom carries the “hallmarks of prejudice” discussed in the pertinent cases. Respondent’s Brief, p. 10. For instance, the Washington Supreme Court reasoned:

The difference between jailhouses and courthouses is evident even in their architectural contrast. Courthouses are often monuments of public life, adorned with architectural flourishes and historical exhibits that make them inviting to members of the public. Many of our county courthouses are on historical registries and are visited each year by school children, civic groups, and tourists. A jail, on the other hand, is singularly utilitarian. Its purpose is to isolate from the public a segment of the population whose actions have been judged grievous enough to warrant confinement. Jail buildings are typically austere in character, and entrance is subject to heightened security. Indeed, the Yakima County jail in which Jaime's trial was held was described by the judge in an unrelated trial as “a monolithic concrete building.”

State v. Jaime, 233 P.3d 554 557 (Wash. 2010).

Similarly, the jail courtroom is within the confines of the jail miles from the courthouse. To reach the jail courtroom, jurors enter the jail building surrounded by razor wire and pass through jail security. *See also State v. Lane*, 397 N.E.2d 1338, 1339 (Ohio 1979) (trial held in courtroom within confines of the penitentiary); *State v. Cavan*, 98 P.3d 381 (Or. 2004) (courtroom within prison reached after passing through prison security).

The district court considered the jail courtroom's appearance in determining Mr. Dixon's claim. Moreover, the jail courtroom is separate from the courthouse and within the jail. The district court erred in not recognizing this setting as inherently prejudicial.

b. the legal basis for objection to a jury trial held at a jail was established at the time of Mr. Dixon's trial and the district court would have erred in holding the jury trial at the jail over Mr. Dixon's objection

The state also contends that trial counsel was not required to “blaze new trails or pursue a motion on a novel issue” and that Mr. Dixon was not prejudiced by the failure to ask the district court to change the trial location because the district court would have denied the motion.

Respondent's Brief, p. 11-12.

However, as explained in Mr. Dixon’s Opening Brief, trial counsel would not have had to blaze new ground to object to the jury trial being held within the county jail. Appellant’s Brief, p. 9-11. In a small state such as Idaho, the absence of an appellate case directly on point does not signify that an issue is novel, particularly in light of the fact that most Idaho trials are conducted in courthouses, not jails. *See also Bright v. State*, 875 P.2d 100, 107 (Alaska Ct. App. 1994) (noting there are few published decisions addressing whether holding a trial inside a prison violates a defendant's right to a public trial “perhaps on account of our strong tradition of holding trials in public courthouses”).

While there is no Idaho decision directly on point, courts in other jurisdictions have been addressing the constitutionality of jury trials in jails and prisons for decades,² including a 2004 opinion from our neighbors in Oregon. *See Cavan*, 98 P.3d at 388 In. 6 (cataloguing opinions on the topic). Trial counsel was obligated to object to the inherently prejudicial practice of holding the jury trial within the confines of the county jail.

Further, no compelling state interest justified holding Mr. Dixon’s jury trial at the county jail. Thus, had counsel objected to the trial setting, the district court would have erred in overruling that objection. Accordingly, Mr. Dixon established that he was prejudiced by counsel’s failure to object to the trial location and the district court erred in denying his petition for post-conviction relief.

² As noted by the state, Mr. Dixon cited cases holding that trials within correctional settings violate the right to a public trial. Respondent’s Brief, p. 9, In. 3. Mr. Dixon is not attempting to raise a separate claim for violation of the right to a public trial (which was not presented to the district court). Instead, the reasoning of those cases is similar to the reasoning discussing the inherently prejudicial nature of trials in correctional settings and are offered for that purpose.

2. Mr. Dixon proved that he received ineffective assistance of counsel due to counsel's failure to present physical evidence and/or expert testimony regarding an injury to Dixon's arm

Counsel was obliged to investigate medical witnesses based on the information provided by Mr. Dixon. Trial counsel nonetheless did not speak with any of Mr. Dixon's medical providers or investigate hiring any expert witnesses. This decision was not strategic decision but, rather, based on counsel's incorrect assumption that no witnesses could be arranged in the applicable three and one half month time frame. Accordingly, the decision to forgo any investigation regarding witnesses who could corroborate Mr. Dixon's physical limitations was unreasonable.

In arguing to the contrary, the state notes that Mr. Dixon did not present medical evidence in support of his claim and that it was therefore speculative. Respondent's Brief p. 15. While it would have been preferable to submit medical evidence, sufficient evidence was in the record to prove Mr. Dixon's claims. Indeed, Mr. Dixon's own testimony establishes the nature of his limitations and the information his medical providers would have provided. The district court did not question the credibility of Mr. Dixon's testimony. *See* R. (39745) p. 93.

Further, it was unreasonable for trial counsel to forgo any and all investigation of medical witness because of her incorrect belief that several months would be required to develop such evidence. Moreover, contrary to the state's assertion, such testimony would have likely made a difference in the verdict. KBG testified that she weighed between eighty and ninety pounds and the man who kidnaped her actually picked her up. Tr. (33384) p. 66, ln. 21 - p. 67, ln. 6. After showing the jury the scar, Mr. Dixon testified that it was more noticeable on the day he was arrested because it was a redder color and he was tanner. *Id.* at p. 299, ln. 9 - p. 300, ln. 17.

KBG did not notice any markings on the perpetrator's arm during their encounter, including when she grabbed his arm to escape. *Id.* at p. 67, ln. 22 - p. 68, ln. 24. There were hundreds of people in the area, including many people playing basketball near the restrooms, and multiple ways of accessing the area where the man had KBG. *Id.* at p. 70, ln. 6-10; p. 234, ln. 16 - p. 236, ln. 7.

Objective testimony from specialized witnesses regarding Mr. Dixon's physical limitations at the time of the alleged offense would have corroborated Mr. Dixon's testimony on that subject and bolstered his explanation that KBG had mistaken him for someone else. As testified to by the attorney expert, such evidence was "fairly crucial." Tr. (39745) p. 147, ln. 16-24. Accordingly, Mr. Dixon was prejudiced by counsel's failure to present witnesses regarding Mr. Dixon's physical limitations.

B. The District Court Abused its Discretion in Denying Mr. Dixon's Motion to Reconsider

Post-conviction proceedings were the exclusive means for Mr. Dixon to challenge the validity of his conviction based on ineffective assistance of counsel. His post-conviction attorney nonetheless failed to provide critical and readily ascertainable information to support his claim of ineffective assistance of counsel. In order to provide Mr. Dixon with a meaningful opportunity to have his claim considered, he should not be penalized for his attorney's failure to introduce medical evidence in support of his petition and unique and compelling circumstances justified considering the physical therapist's affidavit. Further, as described more fully in Mr. Dixon's Opening Brief, information corroborating Mr. Dixon's physical limitations was critical to his defense. Accordingly, Mr. Dixon established that he received ineffective assistance of counsel

and the district court abused its discretion in denying his motion for relief from judgment.

In response, the state indicates the appellate record does not include the transcript from Mr. Dixon's hearing on his motion pursuant to I.R.C.P. 60(b). Respondent's Brief, p. 18, ln.6. However, the transcript for Docket Number 39745, which undersigned counsel obtained from this Court, includes the transcript from the "Rule 60(b) hearing" from January 17, 2012 at pages 187 to 210. This transcript is cited in Mr. Dixon's Opening Brief. Appellant's Brief, p. 22-23. It thus appears that the state is mistaken.

The state also argues that *Eby v. State*, 148 Idaho 731, 228 P.3d 998 (2010) does not apply to this case because the shortcomings of Mr. Dixon's post-conviction attorney were less egregious than the post-conviction attorney in that case. However, in *Eby*, the Court fashioned an exception to the general rule that "parties are bound by the actions (and failures to act) of their attorneys" applicable solely in post-conviction cases. Mr. Dixon acknowledges that the circumstances in *Eby* were far more egregious than in his own. Nonetheless, Mr. Dixon's post-conviction attorney failed to provide critical and available information to support Mr. Dixon's claims. It is unfair to penalize Mr. Dixon for his attorney's shortcomings and the interests of justice dictate that the additional evidence be considered. These circumstances are thus unique and compelling within the meaning of Rule 60(b)(6).

The state also contends that Mr. Dixon argues that ineffective assistance of post-conviction counsel constitutes unique and compelling circumstances and that this argument is being raised for the first time on appeal. However, Mr. Dixon argues that he should not be bound by his post-conviction attorney's inaction consistent with the Court's interpretation of Rule 60(b)(6) in *Eby*. While Mr. Dixon did not raise this specific argument in support of his

motion to reconsider, the motion specifically cites Rule 60(b)(6).

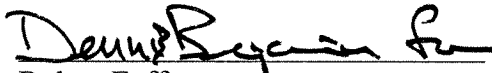
Mr. Dixon should not be held accountable for his post-conviction attorney's failure to support his claim with medical evidence. Accordingly, the district court should have reconsidered its decision in light of the new medical evidence.

III. CONCLUSION

For the reasons set forth above and in Mr. Dixon's Opening Brief, he respectfully asks this Court to reverse the district court's judgment denying his post-conviction claims and his motion for relief from judgment and to remand this case for further proceedings.


Respectfully submitted this 8th day of April, 2014.

NEVIN, BENJAMIN, McKAY & BARTLETT LLP


Robyn Fyffe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April, 2014, I caused two true and correct copies of the foregoing to be mailed to: Office of the Attorney General, Criminal Law Division, P.O. Box 83720, Boise, ID 83720-0010.


Robyn Fyffe