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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM SCOTT DEMINT,)	
)	NO. 45424
Petitioner-Appellant,)	
)	ADA COUNTY NO. CV01-17-1164
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
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BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE STEVEN J. HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

William Demint appeals from the district court's order dismissing his petition for post-conviction relief. He argues the district court erred in dismissing one of his post-conviction claims because the district court failed to give any notice of its reason for the claim's dismissal.

Statement of the Facts and Course of Proceedings

Mr. Demint's petition for post-conviction relief relates to a criminal case arising out of Ada County, CR 2014-12188. In that case, Mr. Demint was charged with four offenses: trafficking in methamphetamine, possession of drug paraphernalia with the intent to deliver, unlawful possession of a firearm, and possession of a controlled substance. (R., p.174.) These charges arose from a traffic stop and subsequent search of Mr. Demint's vehicle. (R., pp.173–74.) Mr. Demint's trial counsel filed a motion to suppress all evidence obtained from the traffic stop. (R., p.174.) The district court denied the motion. (R., p.174.) Pursuant to a plea agreement, Mr. Demint pled guilty to trafficking in methamphetamine and unlawful possession of a firearm. (R., pp.174–75.) His guilty plea was conditional, and he reserved the right to appeal the district court's denial of his motion to suppress. (R., pp.174–75.) The district court sentenced Mr. Demint to twenty years, with ten years fixed, for trafficking in methamphetamine and five years, with two and one-half years fixed, for unlawful possession of a firearm, to be served consecutively. (R., p.172.)

On appeal, Mr. Demint challenged the district court's denial of his motion to suppress. (R., p.175.) *See also State v. Demint*, 161 Idaho 231, 233 (Ct. App. 2016). The Court of Appeals affirmed the district court's order denying Mr. Demint's motion. (R., p.175.) *See also Demint*,

161 Idaho at 234. The Idaho Supreme Court denied review on December 12, 2016. (R., p.172 n.2.)

On January 20, 2017, Mr. Demint filed a timely pro se verified petition for post-conviction relief. (R., pp.6–33.) Along with other ineffective assistance of counsel claims, Mr. Demint argued:

[Trial counsel] Mr. Miller never argued that pursuant to *Terry v. Ohio*¹ that this was a routine traffic stop and should have been treated as such. If law enforcement had information to effect a search then they should have used that procedural process instead of utiliz[ing] a traffic stop, in order to initiate a narcotics search. In this case law enforcement used the traffic stop for that sole purpose. This violated the Petitioner’s Fourth Amendment [rights]. The stop[’]s only tolerable duration is determined by the seizure’s “mission” which is to address the traffic infraction that warranted the stop, *Illinois v. Caballes*,² and attend to related safety concerns.

(R., pp.18–19.) Later on in his petition, Mr. Demint reiterated the holdings from *Terry* and *Caballes* and further argued:

Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. The Fourth Amendment may tolerate certain unrelated investigations that do not lengthen the roadside detention, but a traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket.

(R., pp.23–24 (citations and quotation marks omitted)). Relatedly, Mr. Demint argued:

In this instance, Deputy Lowery was acting on a narcotics tip from a Detective Roberson. The traffic stop was predicated upon this fact. This was the only “mission” of the traffic stop. Detective Roberson’s failure to secure an anticipatory search warrant based on the information obtained from the [confidential informant] was fundamentally a manifest error. Detective Roberson knew that his evidence to obtain a search warrant was insufficient so he and other Detectives, as well as Deputy Lowry and [Sergeant] Clifford utilized a traffic stop to initiate a warrantless search.

¹ 392 U.S. 1 (1968).

² 543 U.S. 405 (2005).

(R., p.28.) He submitted the police officers' conduct violated the due process clause, Article I, Section 17 of the Idaho Constitution, and the Fourth and Fifth Amendment of the United States Constitution. (R., p.28.) Finally, he asserted, "Deputy Lowry's intent was not the traffic stop or the welfare of the occupants" (R., p.29.)

Along with his petition, Mr. Demint also moved for the appointment of counsel. (R., p.32.) The district court granted his motion. (R., p.37.)

On May 12, 2017, the State answered and moved for summary disposition. (R., pp.55–56, 57–70, 71–72.) The State generally moved for dismissal because Mr. Demint's claims "fail to raise genuine issues of material fact, are barred, are bare and conclusory, and are disproven by the record." (R., p.71.) For the legality of the traffic stop claim, the State argued Mr. Demint's claim was disproven by the record because his trial counsel challenged the validity of the traffic stop. (R., pp.66–67.)

At a hearing on June 7, 2017, the district court gave Mr. Demint thirty days to respond to the State's motion for summary disposition. (Tr., p.15, Ls.3–4.) On July 25, 2015, Mr. Demint moved to stay the proceedings and for leave to file an amended petition. (R., pp.149–56.) The district court denied the motion. (R., pp.157–58.)

On August 9, 2017, the district court filed notice of its intent to dismiss in twenty days pursuant to I.C. § 19-4906(b). (R., pp.160–70.) As for Mr. Demint's ineffective assistance of counsel claim due to his trial counsel's failure to challenge the traffic stop, the district court explained:

Demint faults Mr. Miller for failing to argue that the traffic stop was illegal because it was utilized by law enforcement as a way to avoid having to obtain a search warrant based on the confidential informant's tip. This claim is disproven by the record. Mr. Miller's motion to exclude filed on behalf of Demint clearly stated that one basis for the motion was that the "stop by law enforcement was invalid." At the hearing, Mr. Miller proceeded to challenge Deputy Lowry

about his observations of Demint's traffic violations, including how Deputy Lowry performed the speed estimate and whether the speed limit was indeed 55 mph where Demint was observed speeding. In addition, Mr. Miller had Demint testify that he did not see a 55 mph sign prior to being pulled over. During oral argument, Mr. Miller questioned whether the purpose of the stop was truly based on traffic violations, pointing out that Demint was never actually cited for the violations. Ultimately, the Court found Deputy Lowry to be more credible and determined the stop was lawful based on Demint's speeding and his failure to properly utilize his turn signal. Thus because the record demonstrates Mr. Miller did challenge the legality of the traffic stop, Demint's claim is subject to dismissal.

(R., pp.168–69.) Mr. Demint did not respond. On September 8, 2017, the district court ordered the dismissal of Mr. Demint's petition for post-conviction relief. (R., pp.172–82.) The district court's reasons for dismissal mirrored its notice of intent to dismiss. (*Compare* R., pp.164–70 *with* R., pp.176–82.) The district court issued a judgment the same day. (R., p.184.)

On September 19, 2017, Mr. Demint filed a timely notice of appeal. (R., pp.86–87.)

ISSUE

Did the district court err by dismissing one of Mr. Demint's post-conviction claims because the district court failed to give any notice of its reason for dismissal?

ARGUMENT

The District Court Erred By Dismissing One Of Mr. Demint's Post-Conviction Claims Because The District Court Failed To Give Any Notice Of Its Reason For Dismissal

A. Introduction

Mr. Demint contends the district court erred by dismissing one of his ineffective assistance of counsel claims because the district court failed to give any prior notice of its reason for dismissal.

B. General Legal Standards For Post-Conviction Appeals

A petition for post-conviction relief is civil in nature. *State v. Dunlap*, 155 Idaho 345, 361 (2013).

Like a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than “a short and plain statement of the claim” that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*

Charboneau v. State, 144 Idaho 900, 903 (2007).

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. CONST. amend. VI. “[T]he right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To succeed on an ineffective assistance of counsel claim, the petitioner must generally show that (1) his attorney’s performance did not meet “an objective standard of reasonableness,”

and (2) his attorney's deficient performance prejudiced him. *Id.* at 687–88. “Although *Strickland* concerned an allegation of ineffective assistance in a sentencing proceeding, the same standard applies equally to claims arising from the plea process.” *McKeeth v. State*, 140 Idaho 847, 850 (2004) (citing *Hill v. Lockhart*, 474 U.S. 52, 56 (1985)).

The district court can summarily dismiss or grant a petition for post-conviction relief if “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” I.C. § 19-4906(b), (c). “In considering summary dismissal of an application for post-conviction relief, the trial court must accept as true verified allegations of fact in the application or in supporting affidavits, no matter how incredible they may appear, unless they have been disproved by other evidence in the record.” *Dunlap v. State*, 126 Idaho 901, 909 (Ct. App. 1995). The district court is “required to accept the petitioner’s un rebutted allegations as true, but need not accept the petitioner’s conclusions.” *Charboneau*, 144 Idaho at 903. Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009). A petition for post-conviction relief based on a claim of ineffective assistance of counsel will “survive a motion for summary dismissal if the petitioner establishes: (1) a material issue of fact exists as to whether counsel’s performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced petitioner’s case.” *Pratt v. State*, 134 Idaho 581, 583 (2000). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002).

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any

affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party.

Charboneau, 144 Idaho at 903. Because the evaluation of a motion for summary disposition does not involve the finding of contested facts by the district court, it necessarily involves only determinations of law. Accordingly, an appellate court reviews a district court's summary dismissal order de novo. *Muchow v. State*, 142 Idaho 401, 402–03 (2006).

C. The District Court Erred By Dismissing One Of Mr. Demint's Post-Conviction Claims Due To A Lack Of Notice For Its Reason For Dismissal

“If a district court determines claims alleged in a petition do not entitle a petitioner to relief, the court must provide notice of its intent to dismiss and allow the petitioner twenty days to respond with additional facts to support his or her claims.” *Diamond v. State*, 161 Idaho 636, 640 (Ct. App. 2016) (citing I.C. § 19-4906(b); *Crabtree v. State*, 144 Idaho 489, 494 (Ct. App. 2006)). “The purpose of the notice requirement is to ensure that the petitioner will have the opportunity to challenge an adverse decision before it becomes final.” *Baruth v. Gardner*, 110 Idaho 156, 158–59 (Ct. App. 1986). “The court's notice of intent to dismiss should provide sufficiently particular information regarding the basis for its ruling so as to enable the petitioner to supplement the petition with the necessary additional facts, if they exist.” *Diamond*, 161 Idaho at 640–41 (citing *Newman v. State*, 140 Idaho 491, 493 (Ct. App. 2004)). “A notice is insufficient if it merely reiterates the language of the Uniform Post–Conviction Procedure Act.” *Crabtree*, 144 Idaho at 494 (citing *Banks v. State*, 123 Idaho 953, 954 (1993)). “A dismissal under I.C. § 19-4906(b), whether the petitioner responds to a notice of intent to dismiss or not, is a determination on the merits of the claims and is subject to appellate review.” *Garza v. State*, 139 Idaho 533, 537 (2003).

In the case at hand, the district court notified Mr. Demint of its intent to dismiss pursuant to under I.C. § 19-4906(b). (R., p.161.) The district court was expressly “invoking its statutory authority under I.C. § 19-4906(b),” and not merely granting the State’s motion. *Crabtree*, 144 Idaho at 494. As such, “[t]he statutory duty to specify the reasons for the proposed dismissal under I.C. 19-4906(b) rests solely with the district court and it is the district court alone who is responsible for drafting the notice of intent to dismiss.” *Diamond*, 161 Idaho at 642 (citing *Crabtree*, 144 Idaho at 494). Here, the district court failed to address one of Mr. Demint’s ineffective assistance of counsel claims and thus provided no notice of its basis for dismissal. Specifically, the district court did not address Mr. Demint’s claim of ineffective assistance of counsel for his trial counsel’s failure to challenge the unlawful extension of the traffic stop for a drug investigation. (R., pp.18–19, 23–24, 28, 29.) Although the district court gave notice of its intent to dismiss Mr. Demint’s claim based on the initial legality of the traffic stop, the district court gave no notice of its basis to dismiss his claim related to an unlawfully prolonged or extended traffic stop. (*See* R., pp.168–69.) Therefore, the district court’s notice of intent to dismiss “was insufficient to allow [Mr. Demint] a meaningful opportunity to respond to the intended dismissal.” *Diamond*, 161 Idaho at 641. Due to the district court’s failure to provide any notice of its reason to dismiss, the district court erred by dismissing this unaddressed claim, and this case must be remanded for proper consideration of the claim. *See id.* at 642.

CONCLUSION

Mr. Demint respectfully requests that this Court vacate the district court's judgment and its order summarily dismissing his petition for post-conviction relief as to this unaddressed claim and remand this case for further proceedings.

DATED this 11th day of May, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of May, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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E-MAILED BRIEF

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_____/s/_____
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JCS/eas