

IN THE SUPREME COURT OF THE STATE OF IDAHO

SAMUEL WALTER MENDENHALL,)
) No. 45526
 Petitioner-Appellant,)
) Ada County Case No.
 v.) CV-PC-2016-14045
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature Of The Case

Samuel Walter Mendenhall appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

On January 3, 2015, during "an altercation upon the commencement of punishment" (as Mendenhall phrased it), Mendenhall slammed his 14-year-old stepson's head into a desk. (R., pp.82-83 (Tr., p.18, L.5 – p.20, L.12); see also PSI, p.33.) Apparently dissatisfied with the level of "punishment" so inflicted, Mendenhall then returned and punched and/or kicked and stomped on his stepson, J.H., in the ribcage, causing two fractured ribs. (R., p.83 (Tr., p.20, L.19 – p.22, L.1).) There were additional instances of abuse, and J.H. was only able to escape his tormentor when it was time to return to his father's. (PSI, pp.33-34.) J.H. reported the abuse to his father, and they then contacted the police. (PSI, p.33.) Investigation into the abuse also revealed that Mendenhall possessed several firearms, though he was prohibited from doing so as a convicted felon. (R., p.83 (Tr., p.22, Ls.2-17); see also PSI, p.34.)

The state charged Mendenhall with three felony counts of injury to a child, unlawful possession of a firearm, domestic battery in the presence of a child, four additional misdemeanor counts of battery, and an additional misdemeanor count of injury to a child. (See PSI, p.45.) Pursuant to a plea agreement, Mendenhall pleaded guilty to two felony counts of injury to a child for slamming J.H.'s head into the desk and fracturing his ribs, respectively, and to unlawful possession of a firearm, and the state dismissed the remaining counts and agreed not to file a persistent violator enhancement. (See R., pp.79, 82-85 (Tr., p.6, L.8 – p.7, L.15; p.18, L.1 – p.23, L.5; p.27, L.16 – p.28, L.15).) After receiving the PSI, the district court entered judgment

against Mendenhall on August 25, 2015, and sentenced him to consecutive sentences of 10 years with five years fixed on the first count of injury to a child, 10 years indeterminate on the second count, and five years fixed on the firearms violation, for a total sentence of 25 years with 10 years fixed. (R., p.91 (Tr., p.53, L.22 – p.54, L.9).)

On August 1, 2016, Mendenhall filed a timely petition for post-conviction relief, asserting that he received ineffective assistance of counsel when his attorney, allegedly, coerced his guilty plea, allowed him to plead guilty to a non-crime, allowed him to enter a plea while knowing he was under the influence, and failed to present mitigating evidence at sentencing in the form of a psychological evaluation. (R., pp.5-9.) The state answered the petition and filed a motion for summary dismissal on the grounds that its claims were bare and conclusory, contrary to the record and law, and failed to raise a genuine issue of material fact. (R., pp.63-74.) Mendenhall, through counsel, responded to the state's motion to dismiss, narrowing his claim to ineffective assistance of counsel on the basis that his "attorney failed to request or submit a psychological evaluation." (R., pp.96-98.) Following a hearing on the motion (R., p.99), the district court granted the state's motion for summary disposition (R., pp.109-16). Mendenhall filed a timely notice of appeal. (R., pp.118-19.)

ISSUE

Mendenhall states the issue on appeal as:

Did the district court err in summarily dismissing Mr. Mendenhall's claim that his counsel was ineffective in failing to obtain an Idaho Code § 19-2522 evaluation?

(Appellant's brief, p.9.)

The state rephrases the issue as:

Has Mendenhall failed to show that the district court erred when it granted the state's motion for summary dismissal of his petition for post-conviction relief?

ARGUMENT

Mendenhall Has Failed To Show That The District Court Erred When It Summarily Dismissed His Petition For Post-Conviction Relief

A. Introduction

Mendenhall argues that the district court erred when it summarily dismissed his petition for post-conviction relief. (Appellant’s brief, pp.10-26.) Review of the record shows that, applying the correct legal standards and procedures, the district court correctly dismissed Mendenhall’s post-conviction petition. The district court should be affirmed.

B. Standard Of Review

“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” Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. The District Court Correctly Dismissed Mendenhall’s Post-Conviction Petition

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman, 144 Idaho at 522, 164 P.3d at 802; State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). Generally, the Idaho Rules of Civil Procedure apply to petitions for post-conviction relief. Pizzuto v. State, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, unlike other civil complaints, in post-conviction cases, the “application must contain much more than a short and plain statement of the claim that would suffice for a complaint under

I.R.C.P. 8(a)(1).” Monahan v. State, 145 Idaho 872, 875, 187 P.3d 1247, 1250 (Ct. App. 2008) (quoting Goodwin v. State, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002)). Instead, the application must be supported by a statement that “specifically set[s] forth the grounds upon which the application is based.” Id. (citing I.C. § 19-4903). “The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing I.C. § 19-4903).

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief on the trial court’s own initiative or in response to a party’s motion. “To withstand summary dismissal, a post-conviction applicant must present evidence establishing a *prima facie* case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is 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, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). The trial court is not required to conduct an evidentiary hearing prior to dismissing the petition when the alleged facts, even if true, would not entitle the petitioner to relief. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)). “Allegations contained in the application are insufficient for the granting of relief

when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

In the only claim relevant to this appeal, Mendenhall asserted that he received ineffective assistance of counsel. (R., pp.96-98.) Where the petitioner alleges entitlement to relief based on ineffective assistance of counsel, he 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). To establish deficient performance, the petitioner must overcome the strong presumption that counsel’s performance was adequate and “show that his attorney’s conduct fell below an objective standard of reasonableness.” Baldwin v. State, 145 Idaho 148, 154, 177 P.3d 362, 368 (2008) (citations omitted). To establish prejudice, the petitioner must show “a reasonable probability that but for his attorney’s deficient performance the outcome of the proceeding would have been different.” Id.

The basis for Mendenhall’s claim of ineffective assistance of counsel was his assertion that his trial counsel “failed to request or submit a psychological evaluation” under Idaho Code § 19-2522. (R., p.97.) The district court dismissed this claim on the basis that it was disproved by the record: As the district court explained, trial counsel had, in fact, requested a psychological evaluation under Idaho Code § 19-2522. (R., p.113; see also R., p.84 (Tr., p.24, Ls.2-6).) The district court declined that request, opting instead to order a mental health screening under Idaho Code § 19-2524, with the option to order the other psychological report if further evaluation was recommended. (R., p.113; see also R., p.84 (Tr., p.25, Ls.8-15).) No additional evaluations were recommended in the PSI, so the district court did not order the additional psychological evaluation. (R., p.113.)

Where the petitioner alleges that trial counsel was ineffective for failing to file a motion, a conclusion that the motion would not have been granted by the trial court is dispositive of the issue. Lint v. State, 145 Idaho 472, 477, 180 P.3d 511, 516 (Ct. App. 2008). Where counsel in fact brought the motion, and that motion was then denied, that too must be dispositive. Because, contrary to Mendenhall’s claim, trial counsel did request a mental health evaluation under Idaho Code § 19-2522, Mendenhall failed to present a *prima facie* claim that his counsel’s performance was deficient.

With Mendenhall’s actual claim foreclosed by the record, a better argument may have been that the district court erred, in light of the information before it regarding Mendenhall’s mental health, when it failed to order the evaluation under Idaho Code § 19-2522—but that was an issue that should have been raised on direct appeal. Apparently recognizing this (at least to some degree), Mendenhall argues for the first time on appeal that his counsel’s performance was deficient, not for failing to initially request the psychological evaluation, but for failing to insist upon it once the district court expressed an inclination to first order the screening under Idaho Code § 19-2524. (Appellant’s brief, pp.12-22.) Mendenhall claims that this “acquiescence” deprived him of the ability to seek review of the district court’s decision on appeal. (Appellant’s brief, pp.12-14; see also p.14, n.4.) But this is not the argument that was raised by Mendenhall below. (See R., pp.5-8, 96-98.) Because he failed to raise this claim to the district court below, it is unpreserved, and this Court should not address it on appeal. Hoover v. Hunter, 150 Idaho 658, 663-64, 249 P.3d 851, 856-57 (2011); see also State v. Garcia-Rodriguez, 162 Idaho 271, 275-76, 396 P.3d 700, 704-05 (2017) (rejecting a “wrong result-wrong theory” approach and refusing to reverse the district court by application of the correct legal theory).

Moreover, Mendenhall's assertion that trial counsel's failure to insist on a mental health evaluation under Idaho Code § 19-2522 would deprive him of his ability to seek review of the district court's decision is questionable. For much of his argument, Mendenhall relies on the Court of Appeals' opinion in State v. Black, 161 Idaho 867, 392 P.3d 45 (Ct. App. 2017). In that case, though trial counsel withdrew his motion for a psychological evaluation under Idaho Code § 19-2522 and elected (after consulting with Black) not to file any motions to reconsider, the Court of Appeals still considered on direct appeal Black's claim that the district court erred by failing to order the evaluation. The Court of Appeals explained that it was "not overly concerned with the procedural formalities surrounding how [the facts supporting the need for psychological evaluations] become known to the court." Id. at 870, 392 P.3d at 48 (citing State v. Coonts, 137 Idaho 150, 153, 44 P.3d 1205, 1208 (Ct. App. 2002)). The Court also noted that "the sentencing court is not constrained to consider only those facts and arguments provided in support of a motion for a psychological evaluation." Id. Rather, "[w]here the court has reason to know that the defendant has a long history of serious mental illness, the defendant's mental condition will be considered a significant factor at sentencing," and the district court is required to order the evaluation. Id. (citing State v. Hanson, 152 Idaho 314, 320, 271 P.3d 712, 718 (2012)). Thus, if Mendenhall believed the district court erred when it declined to order the evaluation under Idaho Code § 19-2522, it appears he could have raised that issue on direct appeal, irrespective of trial counsel's insistence or acquiescence.

In addition to Mendenhall's failure to present a *prima facie* claim of deficient performance, the district court correctly concluded that Mendenhall also failed to present a *prima facie* claim of prejudice. (R., p.114.) The Court of Appeals has previously held that, to show prejudice on a claim that his attorney was ineffective for failing to present to the sentencing court

a psychological evaluation under Idaho Code § 19-2522, a petitioner must present evidence that an additional report would have affected his ultimate sentence. Richman v. State, 138 Idaho 190, 194, 59 P.3d 995, 999 (Ct. App. 2002). As the district court noted, Mendenhall failed to show that inclusion of a psychological evaluation under Idaho Code § 19-2522 would present any new information regarding his mental health, much less that it would have affected his sentence. (R., p.114.) The court explained that the evidence Mendenhall included with his petition for post-conviction relief to show his need for a psychological evaluation consisted of the same reports already included with the PSI. (Id.) In fact, not only were most of the reports identical (compare, e.g., R., pp.18-20 with PSI, pp.25-27; and R., pp.21-23 with PSI, pp.6-8; and R., pp.24-26 with PSI, pp.10-12; and R., pp.27-28 with PSI, pp.5, 30¹), the psychological reports included in the PSI were actually more comprehensive. The sentencing court had already considered those reports and the information they contained when, after determining that the information was sufficient to understand Mendenhall's mental health issues, it sentenced Mendenhall. The evidence Mendenhall presented with his petition, therefore, does not show any possibility that his sentence would have been affected by additional evaluations.

Moreover, contrary to Mendenhall's assertions that he would have been entitled to an additional mental health evaluation had his trial counsel insisted on it, it appears that the sentencing court's implicit determination that the information at hand was sufficient was correct. The Court of Appeals has previously held that a sentencing court may properly deny a defendant's request for a psychological evaluation where there is sufficient information already in the record to meet the requirements of Idaho Code § 19-2522(3). State v. Durham, 146 Idaho 364, 366, 195 P.3d 723, 725 (Ct. App. 2008). Those requirements are that the report include:

¹ Dr. Negron's report is divided between the beginning and end of the addendum. (PSI, pp.5, 30.) All other reports included in the PSI appear to be complete and in the correct order.

- (a) A description of the nature of the examination;
- (b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;
- (d) A consideration of whether treatment is available for the defendant's mental condition;
- (e) An analysis of the relative risks and benefits of treatment or nontreatment;
- (f) A consideration of the risk of danger which the defendant may create for the public if at large.

I.C. § 19-2522(3). The several reports contained as an addendum to Mendenhall's PSI, taken together with his assessment under Idaho Code § 19-2524, fulfilled these requirements. (See PSI, pp.5-30, 73-82.)

Mendenhall may have argued that the several psychological reports contained in his PSI were not recent enough to provide accurate information of his current mental health, but this argument would also fail. First, that would have been an issue for direct appeal and therefore forfeited for post-conviction. I.C. § 19-4901(b). Second, as noted above and explained by the district court, Mendenhall failed to show "that another report, if done at the time of sentencing, would have produced any new or different evidence" (R., p.114), much less that such evidence would have affected the outcome of his sentence. Thus, not only did Mendenhall fail to show that he would have been entitled to an additional report, he also failed to show that there was a reasonable probability that the addition of an evaluation under Idaho Code § 19-2522 would have affected his sentence. Mendenhall failed to present evidence of prejudice.

The district court correctly concluded that Mendenhall's claim that his trial counsel was ineffective for failing to request a mental health evaluation under Idaho Code § 19-2522 was

disproved by the record. Trial counsel did request that evaluation, and Mendenhall's evolved claim, that trial counsel waived his right to appeal the issue by not insisting on the evaluation, was not preserved below. The district court correctly concluded that, even assuming deficient performance, Mendenhall failed to make a *prima facie* case of prejudice, because he failed to present evidence that inclusion of an additional mental health evaluation would have ultimately affected his sentence. Mendenhall failed to make a *prima facie* claim of ineffective assistance of counsel. The district court, therefore, correctly dismissed his petition for post-conviction relief and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Mendenhall's petition for post-conviction relief.

DATED this 18th day of July, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of July, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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RJS/dd