

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

8-14-2018

Farrow v. State Appellant's Brief Dckt. 45753

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Farrow v. State Appellant's Brief Dckt. 45753" (2018). *Not Reported*. 4782.
https://digitalcommons.law.uidaho.edu/not_reported/4782

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|------------------------------|---|--------------------------------------|
| SONNY DEAN FARROW, |) | |
| |) | NO. 45753 |
| Petitioner-Appellant, |) | |
| |) | KOOTENAI CO. NO. CV 2017-3419 |
| v. |) | |
| |) | |
| STATE OF IDAHO, |) | APPELLANT'S BRIEF |
| |) | |
| Respondent. |) | |
| <hr/> | | |

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 JOHN T. MITCHELL
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
PETITIONER-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
RESPONDENT**

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE | 1 |
| Nature of the Case | 1 |
| Statement of the Facts and Course of Proceedings | 1 |
| ISSUE PRESENTED ON APPEAL | 3 |
| ARGUMENT | 4 |
| The District Court Abused Its Discretion By Denying Mr. Farrow’s Motion For A Continuance | 4 |
| A. Introduction | 4 |
| B. The District Court Abused Its Discretion By Denying Mr. Farrow’s Motion For A Continuance | 4 |
| CONCLUSION | 7 |
| CERTIFICATE OF SERVICE | 8 |

TABLE OF AUTHORITIES

Cases

Sparks v. State, 140 Idaho 292 (Ct. App. 2004)4, 5

State v. Carman, 114 Idaho 791 (1988)4

State v. Hedger, 115 Idaho 598 (1989)4

State v. Ransom, 124 Idaho 703 (1993)4

Strickland v. Washington, 466 U.S. 668 (1984)4

Sun Valley Shopping Center v. Idaho Power Co., 119 Idaho 87 (1991).....4

Rules

Idaho Criminal Rule 35 1, 2, 5

STATEMENT OF THE CASE

Nature of the Case

Sonny Dean Farrow appeals from the district court's order summarily dismissing his petition for post-conviction. At the summary dismissal hearing, counsel for Mr. Farrow requested a continuance so that he could provide evidence of prejudice, which was crucial to avoiding summary dismissal. The district court denied the motion and then summarily dismissed the petition. Mr. Farrow submits that the district court abused its discretion by denying his motion for a continuance.

Statement of the Facts and Course of Proceedings

In 2016, Mr. Farrow pleaded guilty to two counts of domestic battery and the district court imposed consecutive sentences of nine years, with five years fixed, and three years, with one year fixed. (R., p.4.) Mr. Farrow appealed. (R., p.5.)

In 2017, Mr. Farrow filed a petition for post-conviction relief in which he alleged that his trial attorney was ineffective for failing to file an Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion. (R., p.5.) The State filed a motion for summary disposition, asserting that Mr. Farrow could not demonstrate either deficient performance or prejudice. (R., p.41.) Specifically, the State asserted that Mr. Farrow had provided no evidence that his Rule 35 motion would have been successful. (R., p.41.)

In response, Mr. Farrow filed an affidavit from his trial attorney. (R., p.48.) In his affidavit, trial counsel acknowledged that Mr. Farrow had requested that he file a Rule 35 motion and that he did not file the motion because he misread his calendar. (R., p.49.) He also opined that this prejudiced Mr. Farrow. (R., p.49.) The parties stipulated to continue the hearing on the motion for summary dismissal, which the court denied because neither party had provided a

reason for the continuance. (R., p.44; Tr., p.3, L.8 – p.4, L.4.) During the hearing on the state’s motion for summary dismissal, the district court noted that it did not believe that there was evidence in the record regarding what information Mr. Farrow would have submitted with his Rule 35 motion. (Tr., p.17, Ls.11-22.) In response to the court’s questions, counsel for Mr. Farrow stated, “I would be happy to, in addition to the offer of proof, have Mr. Farrow either prepare an affidavit or I would ask to continue this so that we can get him [Mr. Farrow] on the phone to explain to the Court what he’s been doing in prison and what he’s learned about the sentence and how it affects work crews and things such as that.” (Tr., p.19, Ls.17-25.) The district court summarily dismissed the petition, holding that Mr. Farrow had presented no evidence that had a Rule 35 motion been filed, it would have been granted. (Tr., p.20, Ls.14-25.)

In addition, the court stated the following:

There’s been all this time to file an affidavit from Mr. Farrow, and there’s no affidavit from Mr. Farrow. The – there’s no prejudice that’s been demonstrated, no likelihood of success on the merits of a Rule 35, so there’s a Strickland prong that’s completely unsatisfied. I think it’s unfortunate for Mr. Farrow that [trial counsel], as he admits, didn’t timely file the Rule 35, but more unfortunate is the fact that counsel for Mr. Farrow ever since his appointment in this case . . . hasn’t done what counsel should’ve done, what any reasonable counsel should have done. That’s unfortunate, but that’s the status of the case today. The motion’s denied.

(Tr., p.21, Ls.11-25.) Mr. Farrow appealed. (R., p.17.) He submits that the district court abused its discretion by denying his motion for a continuance.

ISSUE

Did the district court abuse its discretion by denying Mr. Farrow's motion for a continuance?

ARGUMENT

The District Court Abused Its Discretion By Denying Mr. Farrow's Motion For A Continuance

A. Introduction

Mr. Farrow submits that the district court abused its discretion by denying his motion for a continuance.

B. The District Court Abused Its Discretion By Denying Mr. Farrow's Motion For A Continuance

The decision to grant or deny a motion for a continuance rests within the discretion of the trial court. *State v. Carman*, 114 Idaho 791, 793 (1988). When an exercise of discretion is reviewed on appeal, the inquiry involves: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94 (1991) (quoting *State v. Hedger*, 115 Idaho 598, 600 (1989)). This “discretion is not unfettered, and [the district court’s] proper role relative to evaluating [a] motion for a continuance necessitate[s] weighing the competing interests of the State and the defendant.” *State v. Ransom*, 124 Idaho 703, 707 (1993). Because the district court did not weigh the competing interests, it not apply the proper legal standard and did not reach its conclusion through an exercise of reason.

As this Court is well aware, the *Strickland*¹ standard applies to claims of ineffective assistance of counsel. *See, e.g., Sparks v. State*, 140 Idaho 292 (Ct. App. 2004). Under this

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

standard, the defendant must show that the attorney's performance was deficient, and that the defendant was prejudiced by the deficiency. *Id.* at 296. Mr. Farrow submits that he provided evidence of deficient performance through the affidavit of his trial counsel, who averred that Mr. Farrow requested a Rule 35 motion and that it was not filed because trial counsel misread his calendar. (R., p.49.) Mr. Farrow acknowledges, however, that he did not present evidence of prejudice; that is, he provided no evidence of what he would have presented with his Rule 35 motion, and therefore provided no evidence that the motion would have been successful.

When counsel moved for a continuance at the hearing, he did so in order to secure evidence of prejudice. Counsel stated, "I would be happy to, in addition to the offer of proof, have Mr. Farrow either prepare an affidavit or I would ask to continue this so that we can get him [Mr. Farrow] on the phone to explain to the Court what he's been doing in prison and what he's learned about the sentence and how it affects work crews and things such as that." (Tr., p.19, Ls.17-25.) Counsel was therefore recognizing that he needed time to provide evidence of prejudice.

Mr. Farrow's interest in obtaining a continuance is extremely high, because without evidence of prejudice he could not prevail on a motion for summary dismissal. The evidence he sought to obtain was absolutely crucial. The district court acknowledged as much:

There's been all this time to file an affidavit from Mr. Farrow, and there's no affidavit from Mr. Farrow. The – **there's no prejudice that's been demonstrated, no likelihood of success on the merits of a Rule 35**, so there's a Strickland prong that's completely unsatisfied. I think it's unfortunate for Mr. Farrow that [trial counsel], as he admits, didn't timely file the Rule 35, but more unfortunate is the fact that **counsel for Mr. Farrow ever since his appointment in this case . . . hasn't done what counsel should've done, what any reasonable counsel should have done.** That's unfortunate, but that's the status of the case today. The motion's denied.

(Tr., p.21, Ls.11-25) (emphasis added). Here, the court is acknowledging that the evidence is so crucial that counsel had been unreasonable in failing to provide it.

Mr. Farrow submits that, in weighing his interests against those of the State, it is clear that the court abused its discretion in denying the motion for a continuance. This is because the State had no interest to weigh; indeed, the State had *stipulated* to a continuance prior to the hearing. (R., p.44.) Considering that the evidence Mr. Farrow sought to obtain was crucial to his case, and that the State had already agreed to a continuance would therefore not be prejudiced, Mr. Farrow submits that the court failed to apply the correct standard or reach its decision through an exercise of reason. Once counsel realized his error in failing to provide evidence of prejudice, he did the only thing he could do, which was request a continuance to obtain that evidence. The State had stipulated to a continuance prior to the hearing and made no objection to the motion that was made near the end of the hearing. As acknowledged by the district court, it was impossible for Mr. Farrow to survive summary dismissal without evidence of prejudice; the court even expressed its concern that counsel had failed to provide this evidence prior. Considering that Mr. Farrow's interest in having a continuance was high and that the State had already stipulated to a continuance, Mr. Farrow submits that the district court abused its discretion in denying the motion for a continuance.

CONCLUSION

Mr. Farrow requests that the district court's order denying a continuance be reversed, that the order summarily dismissing his petition be vacated, and that his case be remanded for further proceedings.

DATED this 14th day of August, 2018.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas