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IN THE SUPREME COURT OF THE STATE OF IDAHO

JONAS,)
) No. 45932
 Petitioner-Appellant,)
) Jerome County Case No.
 v.) CV27-2018-48
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME**

HONORABLE ERIC J. WILDMAN
District Judge

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DEFENDANT-RESPONDENT**

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**PRO SE
PETITIONER-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Jonas (f/k/a Sandra Jonas (R., p. 4)) appeals from a judgment on her latest filings.

Statement Of The Facts And Course Of The Proceedings

Jonas pled guilty to second-degree murder, the district court imposed a sentence of life with 25 years determinate, and the Idaho Court of Appeals affirmed her judgment of conviction and sentence in 2000. State v. Jonas, 2000 Unpublished Opinion No. 760, Docket No. 26014, p. 1 (Idaho App., Dec. 15, 2000) (hereinafter “Jonas I,” copy attached). The district court denied a subsequent motion to withdraw her guilty plea on the merits, which the Court of Appeals affirmed on the grounds that the district court lacked jurisdiction. Jonas v. State, 2006 Unpublished Opinion No. 344, Docket No. 30875, pp. 2-3 (Idaho App., Jan. 30, 2006) (hereinafter “Jonas II,” copy attached). Jonas filed a petition for post-conviction relief, which the district court summarily dismissed. Jonas v. State, 2010 Unpublished Opinion No. 428, Docket No. 35748, p. 2 (Idaho App., April 14, 2010) (hereinafter “Jonas III,” copy attached). The Court of Appeals affirmed the summary dismissal. Id. at pp. 2-6.

Jonas filed a successive petition for post-conviction relief, which the district court summarily dismissed. Jonas v. State, 2013 Unpublished Opinion No. 697, Docket No. 40382, p. 1 (Idaho App., October 3, 2013) (hereinafter “Jonas IV,” copy attached). The Court of Appeals reversed and remanded because Jonas was provided insufficient notice of the bases for dismissal. Id. at pp. 2-3. On remand the district court again summarily dismissed the successive petition, which was affirmed on appeal. Jonas v. State, 2015

Unpublished Opinion No. 605, Docket No. 42272, pp. 1-2 (Idaho App., August 31, 2015)
(hereinafter “Jonas V.,” copy attached).

The district court provided the following procedural history on this case:

On December 1, 2017, the Petitioner filed a petition to vacate conviction and sentence entered in underlying criminal matter and for the return of certain property (“*Petition*”). On December 29, 2017, Petitioner filed a petition for entry of default judgment in the same matter. The Court treated the *Petition* as a petition for post-conviction relief and notified Petitioner that, on its face, the *Petition* failed to meet the requirements of Idaho Code § 19-4901, *et seq.*, and gave notice of its intent to dismiss. On March 9, 2018, Petitioner filed a response and request for appointment of counsel.

(R., p. 17 (compare R., pp. 2-3, 13-14).) The district court granted Jonas’ request to not treat her petition as a (successive) petition for post-conviction relief. (R., pp. 17-18.) Because the matter was not being treated as an action in post-conviction relief, but rather a separate civil claim against the State of Idaho, Jonas was not entitled to appointment of counsel, was required to pay filing fees (which she had not done) and properly serve the state (which she had also not done). (R., p. 18.) For these reasons, the district court denied the motion for appointment of counsel, denied default, and dismissed the petition. (R., p. 18.) The district court entered judgment based on its order. (R., p. 15.) Jonas filed a document titled, “Appeal for CV27-18-48” within 42 days of the entry of judgment. (R., p. 20.)

ISSUE

Jonas provides no statement of the issues. The state presents the issue as:

Has Jonas failed to provide authority and therefore failed to present any issue reviewable on appeal?

ARGUMENT

Jonas Has Failed To Provide Authority And Therefore Failed To Present Any Issue Reviewable On Appeal

“Where an appellant fails to assert his assignment of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court.” Litke v. Munkhoff, 163 Idaho 627, ___, 417 P.3d 224, 234 (2018) (quotations omitted). In addition, the Court “will not search the record on appeal for error.” Hull v. Giesler, 163 Idaho 247, 409 P.3d 827, 831 (2018) (quotations omitted). “When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.” In the Interest Of the Doe Children, 163 Idaho 367, 413 P.3d 767, 772 (2018) (quoting State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996)).

Jonas makes several arguments on appeal, such as that she was coerced into pleading guilty by a defense attorney in a conspiracy with the prosecution; that counsel did not pursue self-defense, again because of the conspiracy with the prosecution; that the police were “dirty” and part of the conspiracy; that a search warrant executed in Blaine and Cassia counties was invalid (and therefore the property taken by the warrant was stolen and should be returned); that another person committed the murder; and that the prosecution should be required to prove her guilt. (Petitioner’s Brief, pp. 1-2.) The Appellant’s brief on appeal contains no citations to authority or the record, makes no cognizable legal argument, and is not supported by propositions of law. (Id.) Jonas’ claims are “too indefinite to be heard by the Court.” Litke, 163 Idaho at ___, 417 P.3d at 234 (quotations omitted).

Even if considered on the merits, the arguments are frivolous. The district court, after treating the petition as the initiation of a civil case and not a post-conviction action as

requested by Jonas, dismissed the case for failing to file the requisite filing fees. (R., p. 18.) Jonas does not challenge the district court's stated basis for dismissal. (Petitioner's Brief.) Jonas has therefore failed to raise a possible claim of reversible error.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 15th day of October, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 15th day of October, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

JONAS
IDOC #58811
POCATELLO WOMEN'S CORRECTIONAL
CENTER, UNIT 5
1451 FORE RD.
POCATELLO, ID 83205

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd

APPENDICES

JONAS I

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 26014

STATE OF IDAHO,	)	2000 Unpublished Opinion No. 760
)	
Plaintiff-Respondent,	)	Filed: December 15, 2000
)	
v.	)	Frederick C. Lyon, Clerk
)	
SANDRA JONAS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Monte B. Carlson, District Judge.

Judgment of conviction and unified life sentence, with a minimum period of confinement of twenty-five years, for second degree murder, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Ronaldo A. Coulter, State Appellate Public Defender; Paul S. Sonenberg, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Alan G. Lance, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PERRY, Chief Judge

This is a sentence review. On July 23, 1999, Sandra Jonas pled guilty to one count of second degree murder. I.C. §§ 18-4001 to -4003. Jonas was originally charged with one count of first degree murder, wherein the prosecutor provided notice of intent to seek the death penalty. However, the charge was later reduced pursuant to a plea agreement. Jonas was sentenced to a unified term of life, with a minimum period of confinement of twenty-five years. Jonas filed a motion for reduction of sentence with the district court pursuant to I.C.R. 35. Following a hearing, the district court denied Jonas's motion. Jonas appeals from her judgment of conviction and sentence, as well as the denial of her Rule 35 motion. For the reasons stated below, we affirm.

An appellate review of a sentence is based on an abuse of discretion standard. *State v. Wolfe*, 99 Idaho 382, 582 P.2d 728 (1978). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 645 P.2d 323 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982).

The record in this case reveals that Jonas has an absolute disregard for the sanctity of human life. Jonas’s current conviction stems from a violent encounter between her ex-husband’s new fiancée and herself. Upon learning that her ex-husband was remarrying, Jonas drove to her ex-husband’s house and shot his fiancée twice in the head with a handgun. Jonas loaded the body into a pickup, drove to a canal, decapitated the body, and dumped the head and body into the canal. At the time she was arrested, police discovered the victim’s engagement ring in Jonas’s pocket.

According to the presentence investigation report (PSI) Jonas has a history of threatening to kill others, including her mother, son, ex-husband, and ex-husband’s former wife. Jonas’s mother told police during the criminal investigation that she feared that Jonas had the potential to harm others and described Jonas as being a very mean individual. Jonas’s ex-husband also described Jonas as a violent person. Jonas’s ex-husband informed the presentence investigator that Jonas had threatened his life on more than one occasion, and often killed pets that wandered onto their property and buried them in her pet cemetery across the street. In addition, the PSI reflects that although Jonas did not deny killing the victim, she denied that the murder was premeditated and referred to it as an accident. The presentence investigator noted that the circumstances surrounding the victim’s murder did not support Jonas’s version of the crime. The PSI also describes Jonas as having a history of substance abuse coupled with a borderline

personality disorder. The PSI further reveals that Jonas has a prior criminal record including convictions for misdemeanor injury to a child, driving under the influence, firearm in a vehicle, and interfering with an arrest. During an interview with the presentence investigator, Jonas admitted to being charged with damaging a police officer's patrol car after she kicked the officer's radio. Based on the above information, the presentence investigator concluded that Jonas should be sentenced to the custody of the Idaho Department of Corrections.

On appeal, Jonas argues that her sentence is excessive given her mental health history, her amenability to treatment, the unique circumstances of her case, and her remorse. At the sentencing hearing, Jonas called two expert witnesses to testify as to her mental health and amenability to treatment. Although both experts felt that Jonas's borderline personality disorder was potentially treatable, both experts expressed severe reservations concerning Jonas's ability to safely re-enter society. The first expert testified that Jonas's treatment would have to occur in a very confined setting, which would likely require a sizeable period of incarceration. This expert went on to conclude that Jonas would not be safe to return to society unless she was willing and able to meet the numerous steps required under her lengthy therapy program. The second expert voiced similar concerns when discussing Jonas's ability to return to mainstream society. This expert stated that the success rate for treating borderline personality disorders was relatively low. He went on to conclude that if Jonas was unable to properly resolve her anger, and her feelings of victimization, he would be concerned about Jonas's return to the community.

Based on the PSI and the nature of Jonas's offense, the district court made the following findings at sentencing:

Sandra Jonas has been presented to this Court as a woman with a borderline personality disorder. The essential feature of borderline personality disorder is a pervasive pattern of instability of interpersonal relationships, self-image, and affect, marked in impulsivity that begins by early adulthood and is present in a variety of contexts. . . .

....
Probation in my opinion is not an option. I'm nervous about parole. It is clear, as a matter of sentencing policy in Idaho that the primary consideration is the good order and protection of society, and all other factors must be subservient to that end.

....
... I think she is presently dangerous. I think she needs treatment. I think her personality type functions best in a structured environment.

This is a homicide. It carries the second greatest punishment the law allows, which is life in prison. A lesser sentence would depreciate the seriousness of the defendant's crime.

Her punishment must fit the crime. Imprisonment is needed to deter her from doing this again. She has killed an individual in my opinion with little or no provocation.

I feel that the slap on the wrist for murder might encourage homicides. You never know how many lives are saved because punishments are harsh. The punishment for such serious crimes needs to be equally serious.

I find little or at least no provocation for the life ending projectile shot from the gun of Sandra Jonas.

I do not find that . . . Ms. Jones's conduct induced or facilitated the commission of this crime.

Although she has expressed statements that she is sorry and wished this would have never happened, she also expressed statements that Meta Jones pissed her off, and that somehow killing her in some way compares to killing cats.

She needs significant time for such treatment, and even then her rehabilitation is not assured. We are told that even if she makes significant gains in the State Penitentiary, upon her release, alcohol abuse can interfere and even destroy those gains. We are also told that a person with borderline personality disorders resist alcohol abuse therapy. Is this a gamble that I am willing to take on behalf of society? No.

The district court fashioned Jonas's sentence taking into account the four sentencing objectives of punishment, deterrence, rehabilitation, and protection of society. As the district court correctly noted, "the primary consideration is, and presumptively always will be, the good order and protection of society. All other factors are, and must be, subservient to that end." *State v. Moore*, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Additionally, the district court was aware of Jonas's mental illness, her alleged amenability to treatment, the unique circumstances of her case, and her remorse at the time the sentence was imposed. The district court addressed each of these factors individually, and at great length, before arriving at an appropriate sentence based on the facts of this case.

Having reviewed the record in this case, we conclude that the district court considered all of the appropriate sentencing factors and carefully weighed the competing interests before

imposing the sentence in this case. Therefore, we hold that the district court did not abuse its discretion.

Next, we review whether the district court erred in denying Jonas's Rule 35 motion. We note that an order denying a motion for reduction of a sentence under I.C.R. 35 is reviewed for an abuse of discretion. If the sentence is found to be reasonable at the time of pronouncement, the defendant must then show that it is excessive in view of the additional information presented with the motion for reduction. *Hernandez*, 121 Idaho at 117, 822 P.2d at 1014.

Jonas's Rule 35 motion sought a reduction of sentence on the basis that she had done well and been productive while incarcerated. Jonas asserts that she has received excellent grades in her computer and drafting classes and that, due to the detailed mental examinations she has undergone, she is now more likely to remain on her medication. We have held that although good conduct while in prison is worthy of consideration, it may not necessarily result in a reduction of a prisoner's sentence. *Hassett v. State*, 127 Idaho 313, 317, 900 P.2d 221, 225 (Ct. App. 1995); *State v. Sanchez*, 117 Idaho 51, 52, 785 P.2d 176, 177 (Ct. App. 1990). The evidence concerning Jonas's good conduct while incarcerated must be viewed in light of the entire record and may not be an accurate indicator of future conduct in a noncustodial setting. *See Sanchez*, 117 Idaho at 52, 785 P.2d at 177. Upon review, we conclude that Jonas has failed to show that the district court abused its discretion in denying her Rule 35 motion.

We have reviewed the record and found an abundance of evidence which supports Jonas's sentence. Therefore, Jonas's judgment of conviction and sentence, as well as the order denying I.C.R. 35 relief, are affirmed.

Judge LANSING, and Judge SCHWARTZMAN, **CONCUR.**

JONAS II

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 30875

STATE OF IDAHO,	)	2006 Unpublished Opinion No. 344
)	
Plaintiff-Respondent,	)	Filed: January 30, 2006
)	
v.	)	Stephen W. Kenyon, Clerk
)	
SANDRA JONAS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Monte B. Carlson, District Judge.

Order of the district court denying motion to withdraw guilty plea, affirmed.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Courtney E. Beebe, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Sandra Jonas appeals from the district court's order denying her motion to withdraw her guilty plea. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

After Jonas shot and dismembered Meta Marie Jones and enlisted Jonas' seventeen-year-old daughter to help dispose of the body in a canal, Jonas pled guilty to second degree murder and was sentenced on November 3, 1999. The judgment of conviction was entered on November 15, 1999. Jonas appealed her conviction and sentence and, on December 15, 2000, this Court affirmed both in an unpublished opinion, *State v. Jonas*, Docket No. 26014 (December 15, 2000). Jonas filed unsuccessful petitions for rehearing and for review. A remittitur was issued on April 18, 2001.

On October 29, 2001, Jonas filed a motion for new trial under I.C.R. 34 and an affidavit in support thereof. Subsequently, Jonas filed an alternative motion for leave to withdraw her guilty plea, along with a memorandum in support thereof, on February 27, 2002.

The district court held two evidentiary hearings on Jonas' motion to withdraw her guilty plea. The district court considered the evidence presented and, on May 10, 2004, denied Jonas' motion to withdraw her guilty plea because the district court was not persuaded a manifest injustice had occurred. Jonas appeals the district court's order.

II.

ANALYSIS

Jonas argues that the district court abused its discretion in denying her Rule 33(c)¹ motion to withdraw her guilty plea because, if her plea is not withdrawn, a manifest injustice will result. The state argues that the district court lacked jurisdiction to consider Jonas' motion to withdraw her guilty plea. Issues of jurisdiction present questions of law, over which we exercise free review. *State v. McCarthy*, 133 Idaho 119, 122, 982 P.2d 954, 957 (Ct. App. 1999).

The Idaho Supreme Court addressed this jurisdictional issue in *State v. Jakoski*, 139 Idaho 352, 79 P.3d 711 (2003). In *Jakoski*, the Supreme Court held that, without a statute or rule extending its jurisdiction, a trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final either by expiration of the time for appeal or affirmance of the judgment on appeal. In that case, Jakoski pled guilty to assault with intent to commit a serious felony. After filing an application for post-conviction relief, which was dismissed, Jakoski filed a Rule 33(c) motion to withdraw his guilty plea. The district court denied Jakoski's motion and Jakoski appealed. The Supreme Court determined that the district court did not have jurisdiction to hear Jakoski's Rule 33(c) motion because Jakoski did not appeal his judgment of conviction and it became final prior to Jakoski filing his Rule 33(c) motion. The Supreme Court explained that Rule 33(c) does not include a provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea and, therefore, once Jakoski's time to

¹ Idaho Criminal Rule 33(c) states:

Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

appeal expired, the district court lacked jurisdiction to hear his motion. *Id.* at 355, 79 P.3d at 714.

Jonas was sentenced on November 3, 1999, and the judgment of conviction was entered on November 15, 1999. This Court affirmed both Jonas' sentence and judgment, and issued a remittitur on April 18, 2001. Jonas filed her motion to withdraw her guilty plea eleven months later, on February 27, 2002. Under *Jakoski*, then, because Jonas was sentenced and this Court issued a remittitur, the district court did not have jurisdiction to consider her motion to withdraw her guilty plea.

III.

CONCLUSION

Jonas' judgment of conviction became final upon the affirmance of her judgment on appeal and thus, the district court lacked jurisdiction to consider Jonas' Rule 33(c) motion, which she filed eleven months later. Therefore, the district court's order denying Jonas' Rule 33(c) motion to withdraw her guilty plea is affirmed.

Chief Judge PERRY and Judge LANSING CONCUR.



JONAS III

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35748

SANDRA JONAS,	)	2010 Unpublished Opinion No. 428
)	
Petitioner-Appellant,	)	Filed: April 14, 2010
)	
v.	)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Daniel C. Hurlbutt, District Judge.

Order dismissing application for post-conviction relief, affirmed.

OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION

Nevin, Benjamin, McKay & Bartlett, LLP; Dennis Benjamin, Boise for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

PERRY, Judge Pro Tem

Sandra Jonas appeals from the district court's order dismissing her application for post-conviction relief without an evidentiary hearing. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

After Jonas shot and dismembered Meta Marie Jones and enlisted Jonas's seventeen-year-old daughter to help dispose of the body in a canal, Jonas pled guilty to second degree murder. The district court sentenced Jonas to a unified term of life imprisonment, with a minimum period of confinement of twenty-five years. This Court affirmed Jonas's judgment of conviction and sentence. *State v. Jonas*, Docket No. 26014 (Ct. App. December 15, 2000) (unpublished). Jonas filed a motion for new trial under I.C.R. 34 and an affidavit in support thereof. Subsequently, Jonas filed an alternative motion for leave to withdraw her guilty plea, along with a memorandum in support thereof. After a hearing, the district court denied Jonas's motion to withdraw her guilty plea because she had failed to show manifest injustice. This Court

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affirmed on the grounds that the district court was without jurisdiction to consider Jonas's untimely motion. *State v. Jonas*, Docket No. 30875 (Ct. App. January 30, 2006) (unpublished).

While the motion to withdraw her guilty plea was pending in the district court, Jonas filed a verified pro se application for post-conviction relief. The state moved to summarily dismiss the application, in part, on the ground that it contained nothing but Jonas's bare and conclusory allegations that were unsupported by any other admissible evidence. After a stay pending the determination of Jonas's appeal on the denial of her motion to withdraw her guilty plea, Jonas was appointed counsel and he filed an amended, but unverified, application for post-conviction relief alleging various conflicts between herself and her trial counsel as well as several grounds of ineffective assistance of counsel which rendered her guilty plea involuntary. The state renewed its motion for summary dismissal. The district court summarily dismissed Jonas's application holding, among other things, that it contained only bare and conclusory allegations. Jonas appeals.

II.

ANALYSIS

Jonas argues that the district court erred by summarily dismissing her application for post-conviction relief because she raised genuine issues of material fact that she received ineffective assistance of counsel and that her guilty plea was involuntary. Additionally, Jonas argues that the district court erred by summarily dismissing her claim that her guilty plea was involuntary without first affording proper notice.

An application for post-conviction relief initiates a civil, rather than criminal, proceeding, governed by the Idaho Rules of Civil Procedure. *State v. Yakovac*, 145 Idaho 437, 443, 180 P.3d 476, 482 (2008); *see also Pizzuto v. State*, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). Like the plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); *Goodwin v. State*, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002). "An application for post-conviction relief differs from a complaint in an ordinary civil action[.]" *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004) (quoting *Goodwin*, 138 Idaho at 271, 61 P.3d at 628)). 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). *State v. Payne*, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008); *Goodwin*,

138 Idaho at 271, 61 P.3d at 628. The application must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, either pursuant to motion of a party or upon the court's own initiative. Summary dismissal of an application is the procedural equivalent of summary judgment under I.R.C.P. 56. "A claim for post-conviction relief will be subject to summary dismissal . . . if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (quoting *Berg v. State*, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)). Thus, summary dismissal is permissible when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Goodwin*, 138 Idaho at 272, 61 P.3d at 629. Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's evidence because 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. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

On review of dismissal of a post-conviction relief application without an evidentiary hearing, we determine whether a genuine issue of material fact exists based on the pleadings, depositions, and admissions together with any affidavits on file. *Rhoades v. State*, 148 Idaho 247, 220 P.3d 1066 (2009); *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct. App. 1993). However, "while the underlying facts must be regarded as true, the petitioner's conclusions need not be so accepted." *Rhoades*, 148 Idaho at 250, 220 P.3d at 1069 (quoting *Phillips v. State*, 108 Idaho 405, 407, 700 P.2d 27, 29 (1985)); see also *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). As the trial court rather than a jury will be the trier of fact in the event of an evidentiary hearing, summary dismissal is appropriate where the

evidentiary facts are not disputed, despite the possibility of conflicting inferences to be drawn from the facts, for the court alone will be responsible for resolving the conflict between those inferences. *Yakovac*, 145 Idaho at 444, 180 P.3d at 483; *Hayes*, 146 Idaho at 355, 195 P.3d at 714. That is, the judge in a post-conviction action is not constrained to draw inferences in favor of the party opposing the motion for summary disposition but rather is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Id.*

First we consider Jonas's claim that the district court summarily dismissed her application for post-conviction relief on grounds different than those alleged by the state's motion for summary dismissal. Jonas acknowledges that the state's motion for summary dismissal and memorandum in support alleged that all of Jonas's claims failed to raise a genuine issue of material fact, were unsupported by admissible evidence, and were comprised of bare and conclusory allegations. In its order summarily dismissing Jonas's application, the district court held, in part, that Jonas "fails to offer any support for her allegations and as such her assertions are bare and conclusory and this court does not accept them." The district court summarily dismissed Jonas's application because it contained nothing but bare and conclusory allegations and failed to raise any genuine issues of material fact. Therefore, the district court summarily dismissed Jonas's application on the same grounds alleged by the state and no additional notice was required.

Jonas argues that the state was required to specifically identify each of Jonas's claims and give the reasons why each should be summarily dismissed. Because the state failed to so identify Jonas's claim that her guilty plea was involuntary, Jonas argues that she had no notice and the district court erred by summarily dismissing it. Jonas argues that *Buss v. State*, 147 Idaho 514, 211 P.3d 123 (Ct. App. 2009), supports this proposition. Jonas mischaracterizes the holding of *Buss*. In that case, the state's motion asserted that Buss's claims lacked evidentiary support and then argued why the court should dismiss a particular claim which was not actually raised by Buss's application. The district court then summarily dismissed Buss's actual claim, and the majority held that the state's all-inclusive statement followed by a detailed argument of why a particular claim should be summarily dismissed did not provide notice concerning the claim that Buss actually raised. *Id.* at 518, 211 P.3d at 127. In this case, the state's motion did not focus on a particular claim but, rather, argued why Jonas's entire application was deficient. It is the applicant's burden to set forth and articulate the claims raised by the application. In a

case such as this, where the application is a rambling, run-on list of extraordinary allegations and factual narrative, we will not require the state to decipher the issues it believes the applicant is trying to raise in its attempt to then address them. Therefore, no further notice was required for the district court to summarily dismiss Jonas's application on the grounds that were provided by the broad reasoning in the state's motion for summary dismissal.

Next, we consider Jonas's argument that she raised genuine issues of material fact that she received ineffective assistance of counsel and that her guilty plea was involuntary. According to Jonas's unverified amended application, her involuntary guilty plea claim arises from counsel's ineffectiveness. Thus, these two claims arise out of the same alleged facts and are in essence the same claim couched in different terms. A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Where, as here, the defendant was convicted upon a guilty plea, to satisfy the prejudice element, the claimant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. *Plant v. State*, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006). This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

In this case, Jonas attached to her original application for post-conviction relief copies of pro se briefs as well as a supporting affidavit from her Rule 34 motion to withdraw her guilty plea. She also argues that her testimony from the hearing on her Rule 34 motion supports her post-conviction claim for ineffective assistance of counsel. Jonas now presents a laundry list of factual allegations gleaned from those materials which, she claims, raise a genuine issue of material fact that counsel was ineffective. However, these pieces of evidence all provide the

same thing--Jonas's bare and conclusory allegations unsupported by any additional evidence. The district court is not required to accept such allegations. *See Roman*, 125 Idaho at 647, 873 P.2d at 901. Finally, Jonas argues that the district court bailiff briefly testified at the hearing on her Rule 34 motion regarding a disagreement with counsel at the change of plea hearing. This does not raise a genuine issue of material fact as to whether counsel was ineffective. Therefore, upon review of Jonas's statements, we conclude the district court did not err by summarily dismissing Jonas's claims.

III.

CONCLUSION

The district court did not summarily dismiss Jonas's application for post-conviction relief on grounds different than those raised by the state in its motion for summary judgment. Thus, no further notice was necessary. Jonas's application and supporting materials contained only bare and conclusory allegations which the district court was not required to accept. Therefore, the district court did not err by summarily dismissing Jonas's claims. Accordingly, the district court's order dismissing Jonas's application for post-conviction relief without an evidentiary hearing is affirmed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**

JONAS IV

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IN THE COURT OF APPEALS OF THE STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION

Docket No. 40382

SANDRA JONAS,	)	2013 Unpublished Opinion No. 697
)	
Petitioner-Appellant,	)	Filed: October 3, 2013
)	
v.	)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Respondent.	)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Robert J. Elgee, District Judge.

Order summarily dismissing petition for post-conviction relief, reversed and remanded.

Greg S. Silvey, Star, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Sandra Jonas pled guilty to second degree murder and was sentenced to a unified term of life in prison, with a minimum period of confinement of twenty-five years. Jonas appealed and this Court affirmed in an unpublished opinion. *Jonas v. State*, Docket No. 26014 (Ct. App. Dec. 15, 2000). Jonas filed a petition for post-conviction relief. The district court summarily dismissed the petition and this Court affirmed the dismissal in an unpublished opinion. *Jonas v. State*, Docket No. 35748 (Ct. App. Apr. 14, 2010). In 2011, Jonas filed a successive petition for post-conviction relief, which forms the basis of this appeal. The district court issued a notice of intent to dismiss and appointed counsel. Jonas subsequently filed an amended petition, to which the state filed a response.¹ Without providing further notice, the district court dismissed the amended petition, finding Jonas did not demonstrate sufficient reason why her claims were

¹ While Jonas's verification signature was not notarized, the district court disregarded this and addressed the merits of Jonas's successive petition.



inadequately raised in her first petition. The district court also provided an alternate ground for its ruling, addressing the merits of Jonas's ineffective assistance claim. Jonas appeals.

Jonas argues the district court erred by dismissing her petition on grounds not articulated in the notice of intent to dismiss. The state argues that the district court provided sufficient notice. The district court cannot dismiss claims on its own motion if it does not give the parties a twenty-day notice stating its reasons for doing so as required by I.C. § 19-4906(b). *DeRushé v. State*, 146 Idaho 599, 602, 200 P.3d 1148, 1151 (2009). Likewise, if the state moves to dismiss a petition under I.C. § 19-4906(c), the court cannot dismiss a claim on a ground not asserted by the state in its motion unless the court gives the twenty-day notice required by I.C. § 19-4906(b). *Saykhamchone v. State*, 127 Idaho 319, 322, 900 P.2d 795, 798 (1995).

In its notice of intent to dismiss addressing Jonas's original successive petition, the district court focused upon the factual insufficiencies. The district court did not discuss waiver under I.C. § 19-4908 or explain how Jonas's petition was deficient for failing to articulate sufficient reason to proceed on a successive petition. However, in the district court's order dismissing Jonas's successive petition, the district court based its ruling upon waiver under I.C. § 19-4908.

In support of its position that adequate notice was provided, the state places emphasis on the following two sentences in the district court's notice:

In fact, [Jonas] appears to have listed an exceptionally wide array of claims, some of which she has asserted in prior petitions and motions . . . supported only by her description of the facts as she sees them.

Thus, [Jonas] does not present adequate grounds upon which to base a successive application for post-conviction relief.

However, when these sentences are read in the context of the entire notice of intent to dismiss, it is apparent that waiver under I.C. § 19-4908 is not a ground the district court was providing notice for. Therefore, Jonas did not receive adequate notice and the district court erred in dismissing her petition on this ground.²

² We do not address the merits of the district court's dismissal on the grounds of waiver under I.C. § 19-4908 and do not purport to foreclose that possibility after adequate notice is provided.

Next, the state argues that the district court's alternate ruling provides a basis for affirming because Jonas provided no evidence to support the assertions made in her amended petition. Because Jonas never received notice of the alleged deficiencies in her amended petition, we disagree.

While the district court initially provided notice of its intent to dismiss with respect to Jonas's original successive petition, Jonas thereafter filed an amended petition for post-conviction relief. This amended petition raised facts, claims, and arguments distinct from those in the original petition to which the district court's notice of intent to dismiss was directed. Under these circumstances, the district court needed to provide a new notice of intent to dismiss in order to address these new facts, claims, and arguments and to allow Jonas an opportunity to reply.³ The district court failed to provide a new notice following the filing of the amended petition. Therefore, Jonas did not receive adequate notice under I.C. § 19-4906(b) and the district court erred in summarily dismissing the amended petition. Thus, we reverse the order summarily dismissing Jonas's successive petition and remand to the district court for proceedings consistent with this opinion. Costs, but not attorney fees, are awarded to Jonas on appeal.

Judge LANSING and Judge GRATTON, CONCUR.

³ However, this is not to say that a new notice will always be required following the filing of an amended petition. It will necessarily depend upon the differences in facts alleged, claims set forth, and arguments made.

JONAS V

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42272

SANDRA JONAS,	)	2015 Unpublished Opinion No. 605
)	
Petitioner-Appellant,	)	Filed: August 31, 2015
)	
v.	)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Respondent.	)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Robert J. Elgee, District Judge.

Summary dismissal of successive petition for post-conviction relief, affirmed.

Sandra Jonas, Pocatello, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Sandra Jonas appeals from the district court's summary dismissal of her successive petition for post-conviction relief. We affirm.

Jonas pled guilty to second degree murder and the district judge imposed a unified life sentence with twenty-five years determinate. This Court affirmed Jonas's judgment of conviction and sentence. *Jonas v. State*, Docket No. 26014 (Ct. App. Dec. 15, 2000) (unpublished). Jonas filed her initial petition for post-conviction relief in 2002, which was summarily dismissed by the district court, and this Court affirmed the dismissal. *Jonas v. State*, Docket No. 35987 (Ct. App. July 26, 2010) (unpublished). In May 2011, Jonas filed a successive petition for post-conviction relief, which was also summarily dismissed. On appeal, this Court reversed, concluding the district court failed to provide adequate notice of the basis of its dismissal. On remand, the district court provided notice of its intent to dismiss the petition,

and thereafter summarily dismissed Jonas's successive petition. Jonas now appeals the district court's second order summarily dismissing her successive petition for post-conviction relief.

Below, Jonas raised eighteen individual claims in her successive petition, all of which were summarily dismissed. On appeal, Jonas does not raise any issue as to the district court's decision relative to her claims raised below. Instead, her appellate brief is a narrative of complaints with the legal system, her trial attorney, and the district judge unsupported by any legal argument or authority. Therefore, as argued by the State, Jonas has failed to show any error by the district court in summarily dismissing her successive petition for post-conviction relief. *See State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (A party waives an issue on appeal if either authority or argument is lacking.). Accordingly, the district court's second order dismissing Jonas's successive petition for post-conviction relief is affirmed.

Chief Judge MELANSON and Judge GUTIERREZ **CONCUR**.