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Matney v. State Appellant's Reply Brief Dckt. 45672

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

ANTHONY MICHAEL MATNEY,	)	
	)	**NO. 45672**
Petitioner-Appellant,	)	
v.	)	**CANYON COUNTY NO. CV-2016-12517**
STATE OF IDAHO,	)	**APPELLANT'S REPLY BRIEF**
Respondent.	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE GENE A. PETTY
District Judge

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ATTORNEY FOR RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Anthony Matney appeals from the judgment summarily dismissing his petition for post-conviction relief.

Statement of Facts and Course of Proceedings

The factual and procedural histories of this case were previously detailed in Mr. Matney's Appellant's Brief and, therefore, are not repeated herein.

ISSUE

Did the district court err in summarily dismissing Mr. Matney's Claim 9(k), where the basis for dismissal was that Mr. Matney had failed to *prove* his claim?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Matney's Claim 9(k), Where The Basis For Dismissal Was That Mr. Matney Had Failed To *Prove* His Claim

Mr. Matney contends that in summarily dismissing Claim 9(k) because he failed to *prove* that ineffective assistance of counsel claim, the district court erred. As detailed in Mr. Matney's Appellant's Brief, he was not required to *prove* the two-pronged *Strickland*[1] standard for ineffective assistance of counsel in order to survive summary dismissal. In fact, he was not required to *prove* anything at the summary dismissal stage.

In response, the State seems to concede that Mr. Matney was not required to *prove* Claim 9(k)—his claim that he received ineffective assistance of counsel insofar as his counsel incorrectly advised him that withdrawal of his guilty plea prior to sentencing "is absolutely not allowed"—as he need only have properly pled it and raised a genuine issue of material fact as to each of the prongs of the ineffectiveness standard. (*See* Resp. Br., pp.7, 14-15.) The State also explicitly concedes that Mr. Matney pled "a *prima facie* case" of the first prong—"that his trial counsel provided deficient performance." (Resp. Br., p.8.) However, the State argues Claim 9(k) was properly dismissed because Mr. Matney failed to plead the second prong—prejudice. (Resp. Br., pp.6-15.)

Whatever merit the State's argument might otherwise have, that argument is not appropriate for this Court's consideration, as it is being made for the first time on appeal, and without the statutorily-required prior notice.

It has long been recognized in Idaho that "appellate review is limited to the evidence, theories and arguments that were presented below." *State v. Garcia-Rodriguez*, 162 Idaho 271, 274-76 (2017) (quoting *Nelson v. Nelson*, 144 Idaho 710, 714 (2007)). And it is now clear that

[1] *Strickland v. Washington*, 466 U.S. 668 (1984) (requiring a showing of both deficient performance, and prejudice, in order to prevail on a claim of ineffective assistance of counsel).

this standard "applies to all parties on appeal." *Id*. at 276. Below, the State never argued that Claim 9(k) was subject to dismissal for any alleged failure to plead prejudice. Rather, in its motion for summary dismissal, the State argued Claim 9(k) should be dismissed because it failed on its merits because Mr. Matney had personally consented to the withdrawal of his motion to withdraw his guilty pleas. (R., pp.125-26.) The entirety of the State's argument was as follows:

> In the same light as the paragraph above [ineffective assistance of counsel], Petitioner attacks his ability to withdraw his guilty plea. Contained within the Sentencing Transcript at pages 5, 6, 7, 8, 9, 10, 11, the issue of Petitioner withdrawing his guilty plea was brought up. At no time did Petitioner indicate that he was being forced to withdraw his request to set aside the guilty plea or take issue with the sentencing going forward. In fact, Petitioner discussed the matter with the Court and decided to withdraw the request to set aside the guilty plea. "If you need further clarification and explanation, you can have time to do that. Defendant: No. Let's just go ahead and proceed."

(R., pp.125-26 (quoting the sentencing transcript at p.10, Ls.9-12).)[2] This argument appears to have been that, because Mr. Matney acted on the erroneous advice of his counsel, counsel's erroneous advice could not have constituted ineffective assistance—an attack on the merits of his claim, not on the adequacy of Mr. Matney's pleadings.[3]

Later, at the summary dismissal hearing, the State reiterated essentially the same argument:

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[2] This portion of the sentencing transcript appears at page 77 of the Clerk's Record.

[3] In its brief, the State attempts to make it seem as if it has only ever argued that Mr. Matney inadequately pled Claim 9(k). First, it points out that it "argued that Matney's factual assertions were conclusory and did not establish a *prima facie* case as to any of his claims." (Resp. Br., p.3.) However, in support of this claim, the State cites introductory language at the outset of its "Argument" section in its motion to dismiss, which was not necessarily directed at Claim 9(k). (*See* R., p.123.) Claim 9(k) was specifically addressed two pages later, where the State proffered the argument quoted above. (*See* R., pp.125-26.) Second, citing the portion of its motion wherein it specifically addressed Claim 9(k), the State attempts to characterize its argument in the district court as an attack on the adequacy of Mr. Matney's pleading: "[T]he State asserted[ ] Matney failed to allege facts demonstrating he was prejudiced by any deficient trial counsel performance." (Resp. Br., p.3 (citing R., pp.125-26).) However, the plain language of the State's argument below—focusing solely on the merits of Mr. Matney's claim—belies the State's current attempt to characterize it as an attack on the adequacy of his pleadings.

> If it is being considered in the ineffective assistance of counsel argument, there was the specific inquiry by the trial judge, you know, "Do you want to withdraw your guilty plea?" And then Mr. Matney indicates, "No. Let's go ahead and proceed."[4]
>
> So the State or respondent in this case is left with trying to utilize a record where the defendant in the criminal case, or the petitioner, has—has responded to specific inquiries from the court about pleading, about withdrawing, more importantly specifically gave consideration about withdrawing that plea, and he said no. And now we have this allegation that, oh, I couldn't have—couldn't have withdrawn it.[5]
>
> And so I believe that there is ample evidence from this record that Mr. Matney exercised his independent decision-making at that time to proceed with the case.

(Tr., p.4, Ls.6-21.) So again, the State's argument went to the merits of Mr. Matney's claim, not the adequacy of his pleading. Because the State never argued below that Claim 9(k) should be dismissed based on an alleged failure to adequately plead prejudice, the State is prohibited from making such an argument in this appeal. *Garcia-Rodriguez*, 162 Idaho at 274-76.

Further, even if the State's new argument were not barred by *Garcia-Rodriguez*, it would be an improper basis for relief under the Uniform Post-Conviction Procedure Act ("UPCPA"). Under the UPCPA, summary dismissal is only permitted where the petitioner has been given prior notice of the ultimate reason(s) for dismissal. *See* I.C. § 19-4906(b) (providing that a court may summarily dismiss a petition for post-conviction relief *sua sponte*, but only after giving the petitioner notice of "its intention to dismiss the application and its reasons for doing so" and at least 20 days to respond to that notice); *DeRushe v. State*, 146 Idaho 599, 601 (2009) (recognizing that under I.C. § 19-4906(c) a court may also summarily dismiss a petition for post-conviction relief in response to a party's motion, but holding that any such motion must give

[4] This is not a verbatim quote of the proceedings. It appears that the prosecutor's argument combined portions of pages 7 and 10 of the sentencing hearing transcript. (*See* R., pp.76-77.)
[5] This was a misrepresentation of Mr. Matney's claim. He did not allege that he could not have withdrawn his guilty pleas; he alleged that his attorney told him he could not withdraw his guilty pleas. (R., p.8.)

specific notice of the reasons for dismissal). Here, because the State's motion only argued the merits of Claim 9(k) (*see* R., pp.125-26), and because the district court did not give notice of its intent to dismiss *sua sponte* (*see generally* R.), Mr. Matney has never received any notice that Claim 9(k) was subject to dismissal for allegedly failing to adequately plead prejudice, and it would be improper for this Court to affirm the district court's dismissal on that basis. *Cf. Kelly v. State*, 149 Idaho 517, 523 (2010) ("[W]here a trial court dismisses a claim based upon grounds other than those offered—by the State's motion for summary dismissal, and accompanying memoranda—the defendant seeking post-conviction relief must be provided with a 20–day notice period.").

Had Mr. Matney been given proper, timely notice that Claim 9(k) may have been deficient for its failure to plead prejudice, he undoubtedly could have remedied the alleged defect in the district court. The claim itself quite clearly alleged that Mr. Matney withdrew his motion to withdraw his guilty plea based on the erroneous advisement of his counsel. (*See* R., p.8.) The obvious inference to be drawn from this allegation is that, had his counsel not mis-advised him, he would not have withdrawn his motion, and would have continued pursuing his attempt to withdraw his guilty plea. Amending the petition to add an allegation to this effect would have been a simple matter, but it never happened because Mr. Matney was never given notice of the need to do so.

Because the State's new argument on appeal—that Mr. Matney's petition was properly dismissed based on his failure to plead prejudice in Claim 9(k)—is not properly before this Court because it was never made (by either the State or the district court) below, it should be disregarded. The real question in this case is whether the district court erred in dismissing Mr. Matney's petition when, instead of applying the required summary dismissal standard

(asking whether there was a genuine issue of material fact), it held Mr. Matney to a standard of having to *prove* his claims. However, on this point, the State has very little to say. (*See* Resp. Br., pp.14-15.) The State simply dismisses the district court's words as "imprecise language," and argues the district court's ruling was "broad enough" to encompass the proper standard—essentially asking this Court to substitute what the district court should have said, for that which it did say. (*See* Resp. Br., pp.14-15.) However, Mr. Matney asks that this Court consider what the district court actually said. When the district court's ruling (*see* R., pp.154-57) is taken at face value, it is readily apparent that the district court evaluated whether Mr. Matney had *proved* his claim. (*See* App. Br., pp.9-14.) As such, the district court applied the wrong legal standard.

CONCLUSION

For the reasons set forth herein, and in his Appellant's Brief, Mr. Matney respectfully requests that this Court vacate the district court's judgment and its summary dismissal order, and that it remand this case to the district court for an evidentiary hearing on Claim 9(k).

DATED this 7th day of February, 2019.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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