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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,	)	
	)	**Canyon County Case No.**
v.	)	**CV-2016-12517**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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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STATEMENT OF THE CASE

Nature of the Case

Anthony Michael Matney appeals from the district court's order summarily dismissing his post-conviction petition.

Statement of Facts and Course of Proceedings

In October 2014, Matney was arrested for driving the under influence. (See R., pp.143-144.) Because Matney had another felony DUI conviction within the previous 15 years, the state charged him with felony DUI, I.C. § 18-8005(9). (See id.) In November 2014, Matney, while represented by counsel, pled guilty to the charge. (R., pp.88-94.) Pursuant to an agreement with the state, Matney also pled guilty to a persistent violator sentencing enhancement that the state filed the same day as the change of plea hearing. (Id.)

After the change of plea hearing, but before sentencing, Matney sent a *pro se* letter to the district court. (9/19/18 Augmentation, p.1.[1]) In the letter, Matney asserted that on November 6, 2014, prior to his arraignment, his trial counsel told him that if he pled guilty to felony DUI, the state would not file a persistent violator sentencing enhancement. (Id.) Matney did not specifically assert that by the time he entered his guilty pleas, he was unaware that he was pleading guilty to the sentencing enhancement. (See id.) Matney instead acknowledged that his counsel "explain[ed] things" to him on November 26, 2015, the date of the change of plea hearing. (Id.) Matney then requested either that he be allowed to withdraw his guilty plea, or that the state dismiss the persistent violator sentencing enhancement. (Id.)

[1] On September 19, 2018, this Court granted Matney's motion to augment the appellate record with Matney's January 29, 2015 *pro se* letter to the district court. (9/19/18 Order.) The district court took judicial notice of the letter in the underlying post-conviction proceeding. (R., p.156 n.2.)

At a continued sentencing hearing on February 4, 2015, the district court brought up the matter of Matney's *pro se* letter. (R., p.76.) The court took a recess so that Matney could consult with his counsel. (Id.) After the recess, Matney's counsel informed the court that Matney wished to proceed to sentencing and to withdraw his request that his guilty pleas be withdrawn. (Id.) After questioning from the court, Matney confirmed that this this was his desired course of action. (R., pp.76-77.) The sentencing hearing then continued. (R., pp.77-81.)

The district court imposed a unified 25-year sentence with six and one-half years fixed. (R., pp.47-48, 79-80.) The court denied Matney's subsequent I.C.R. 35 motion for reduction of sentence. (R., pp.52-53, 56-71.) On direct appeal, Matney challenged only the district court's sentencing determination and denial of his I.C.R. 35 motion. See State v. Matney, Docket No. 44143, 2016 WL 106174 (Idaho App. January 8, 2016) (unpublished). In an unpublished opinion, the Idaho Court of Appeals affirmed the district court. Id.

In December 2016, Matney filed a *pro* se post-conviction petition. (R., pp.2-10.) The petition contained two broad claims which collectively consisted of approximately 18 distinct sub-claims. (R., pp.3-9.) The district court appointed counsel to represent Matney in the proceeding. (R., pp.23-27.) However, appointed counsel declined to amend the petition. (R., pp.116-117.)

In his *pro se* petition, relevant to this appeal, Matney asserted (Claim 9(k)), that his trial counsel gave him erroneous legal information regarding a defendant's ability to withdraw his guilty plea. (R., p.8.) Specifically, Matney asserted that during his continued sentencing hearing, his trial counsel told him that "it was too late to withdraw his [p]leas," and that "withdrawal of a '[g]uilty' [p]lea is absolutely not allowed." (Id.) Matney further asserted that

"[i]n retrospect, it is obvious that [trial counsel] lied to Matney to keep his secret unwritten 'agreement' with the prosecutor…." (Id.)

The state moved for the summary dismissal of Matney's post-conviction petition. (R., pp.118-127.) The state noted its difficulty in attempting to construe Matney's claims. (R., p.119; p.119 n.1.) The state then argued that Matney's factual assertions were conclusory and did not establish a prima facie case as to any of his claims. (R., pp.123-124.) The state also noted that the change of plea hearing transcript revealed that Matney understood the terms of the plea agreement and the nature of his guilty pleas, including that he was pleading guilty to the sentencing enhancement. (R., p.125.) Specifically with respect to Claim 9(k), the state noted that the sentencing hearing transcript demonstrated that Matney wished to withdraw any request he made to withdraw his guilty pleas after questioning from the court. (R., pp.125-126.) Therefore, the state asserted, Matney failed to allege facts demonstrating he was prejudiced by any deficient trial counsel performance. (R., pp.125-126.) In response, Matney did not present any additional evidence or attempt to clarify Claim 9(k). (See R., p.133.)

After a hearing (see generally Tr.), the district court granted the state's motion for summary dismissal (pp.143-159). The court first concluded that, as Matney acknowledged in his response brief, many of Matney's post-conviction claims did not meet the pleading requirements of I.R.C.P. 11 and would be dismissed on that basis. (R., pp.147-148.) The court concluded that other claims were forfeited because they could have been raised on direct appeal. (R., pp.149-150.) With respect to Claim 9(k) (and several related claims), the court concluded: (1) Matney's guilty pleas were voluntarily and knowingly entered; and (2) Matney's motion to withdraw his guilty plea likely would not have been successful even had it not been withdrawn. (R., pp.150-157.) Therefore, the court further concluded, even if trial counsel provided Matney with

erroneous legal information about a defendant's ability to withdraw his guilty pleas, Matney did not demonstrate prejudice from this deficiency. (Id.) Matney timely appealed. (R., pp.163-166.)

ISSUE

Matney states the issue on appeal as:

> 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?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Matney failed to demonstrate that the district court erred by summarily dismissing his post-conviction claim that his trial counsel was ineffective for providing him with an incorrect legal standard regarding the withdrawal of guilty pleas?

ARGUMENT

Matney Has Failed To Demonstrate That The District Court Erred By Summarily Dismissing His Post-Conviction Claim That Trial Counsel Was Ineffective For Providing Him With An Incorrect Legal Standard Regarding The Withdrawal Of Guilty Pleas

A. Introduction

Matney contends that the district court erred by summarily dismissing his post-conviction petition. (Appellant's brief, pp.7-14.) Specifically, Matney assigns error to the court's summary dismissal of his claim that his trial counsel was ineffective for advising him that it was "too late" to withdraw his guilty pleas and that a withdrawal of a guilty plea is "absolutely not allowed." (Id.) Matney's assertion fails. A review of the record reveals that Matney failed to allege facts demonstrating that he was prejudiced by the alleged deficient performance. The district court therefore did not err in summarily dismissing this claim.

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 material 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).

C. Matney Failed To Allege Facts Demonstrating *Strickland* Prejudice With Respect To Claim 9(k)

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).

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party's motion or on the court's own initiative, 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." Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). Until controverted by the state, allegations in a verified post-conviction application are, for purposes of determining whether to hold an evidentiary hearing, deemed true. Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). However, 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. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994). Further, allegations contained in a post-conviction petition are insufficient for granting relief when they are clearly disproved by the record of the original proceeding or do not justify relief as a matter of law. Workman, 144 Idaho at 522, 164 P.3d at 802; Charboneau v. State, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007).

A post-conviction petitioner alleging ineffective assistance of counsel must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). Bare assertions and speculation, unsupported by specific facts, do not make out a *prima facie* case for ineffective assistance of counsel. Roman, 125 Idaho at 649, 873 P.2d at 903. An attorney's performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel's conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). To establish

prejudice, a defendant must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988); Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 245 (Ct. App. 1999).

The state first acknowledges that in Claim 9(k), at least one of Matney's factual allegations established a prima facie case that his trial counsel provided deficient performance. The alleged statement attributed to trial counsel that guilty plea withdrawals are "absolutely not allowed" was (if the statement was made), plainly an objective misstatement of the law. See I.C.R. 33(c).[2]

However, as the district court also concluded (R., pp.154-157), Claim 9(k) was factually inadequate to establish a prima facie Strickland prejudice claim. First, Matney did not attempt to argue that a motion to withdraw his guilty pleas would have been successful, and a review of the sentencing hearing transcript belies the relevant assertions from Matney's *pro se* letter/motion to the court which would have supported such a motion. Second, Matney did not specifically allege that trial counsel's misstatement of the relevant law was the reason he chose to withdraw his motion to withdraw his guilty pleas, and a review of the change of plea hearing transcript cast doubt on this nexus which Matney seeks to infer on appeal.

A motion to withdraw a guilty plea may be made before sentence is imposed. I.C.R. 33(c). The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); State v. Hanslovan, 147 Idaho 530, 535,

[2] However, as the district court indicated (R., p.156), the alleged statement attributed to trial counsel that "it was too late" for Matney to withdraw his guilty plea appeared to simply be a statement of trial counsel's opinion regarding the likelihood of such a withdrawal motion actually being successful. The district court did not expressly analyze or make a Strickland determination regarding trial counsel's alleged statement that guilty plea withdrawals are "absolutely not allowed."

211 P.3d 775, 780 (Ct. App. 2008). The defendant bears the burden of proving, in the district court, that the plea should be withdrawn. Hanslovan, 147 Idaho at 535, 211 P.3d at 780; Griffith v. State, 121 Idaho 371, 374-375, 825 P.2d 94, 97-98 (Ct. App. 1992). In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. Hanslovan, 147 Idaho at 536, 211 P.3d at 781; State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990). As a matter of constitutional due process, a plea is knowing and voluntary if it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel." Brady v. United States, 397 U.S. 742, 755 (1970).

If the plea was voluntary, in the constitutional sense, then the court must determine whether other just cause exists to allow the defendant to withdraw the plea. Hanslovan, 147 Idaho at 536, 211 P.3d at 781. The good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide. Id. at 537, 211 P.3d at 782. Further, when the motion to withdraw a guilty plea is presented after the defendant has learned of the content of the PSI or has received other information about the probable sentence, the district court may temper its liberality by weighing the defendant's apparent motive. State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004).

In this case, as the court noted, Matney's PSI was compiled and disclosed to him prior to the mailing of his *pro se* letter seeking a withdrawal of his guilty plea. (R., p.156.) Therefore, the district court would have been permitted to "temper its liberality" in weighing Matney's apparent motive for wishing to withdraw his plea, had Matney decided to pursue such a motion. This is particularly true considering the conclusions, observations and recommendation of the PSI investigator. Matney's PSI compiled his extensive criminal history and noted that several of

his prior DUI offenses occurred while he was on probation or parole for previous convictions. (#43056 PSI, pp.5-20, 31-32.[3]) The PSI investigator concluded that "although [Matney] expressed a desire to seek treatment and remain in the community, based on his continued alcohol abuse and criminal behavior, it is apparent he is not a suitable candidate for community supervision at this juncture," and that Matney "has no regard for the safety of others and is extremely lucky he has not injured anyone with his dangerous behavior." (#43056 PSI, p.32.) The timing of Matney's motion to withdraw his guilty plea, made only after the PSI was compiled, would have made it less likely that any such motion would have been successful.

In addition, the only ground Matney set forth for the withdrawal of his guilty pleas in his *pro se* letter to the court is belied by the record. In the letter/motion, Matney alleged that on November 6, 2014, prior to his arraignment, his trial counsel told him that if he pled guilty to felony DUI, the state would not file a persistent violator sentencing enhancement. (9/19/18 Augmentation, p.1.) It is not clear whether this alleged statement of trial counsel was intended to relay an actual plea offer from the state, or was simply a prediction from trial counsel on how the case may ultimately be resolved. Matney further did not specifically assert in the letter that by the time he entered his guilty pleas, he was unaware that he was pleading guilty to the sentencing enhancement. (See id.)

However, even if such factual assertions could be liberally inferred from Matney's post-conviction petition, a review of the change of plea hearing transcript reveals that Matney was aware of the nature of his guilty pleas at the time they were entered. At the change of plea hearing, the parties informed the state that Matney had agreed to plead guilty to the persistent

[3] Contemporaneous with this brief, the state filed a motion to augment the appellate record with the PSI associated with Matney's underlying felony DUI conviction. The district court took judicial notice of this PSI in Matney's post-conviction proceeding. (R., p.156 n.2.)

violator sentencing enhancement. (R., p.88.) The court specifically informed Matney that the maximum penalty for felony DUI, as enhanced due to Matney's status as a persistent violator, was life in prison. (Id.) Matney told the court that he understood he was pleading guilty to this enhancement. (Id.) After the court then specifically referenced the prior convictions that supported it, Matney pled guilty to enhancement. (R., pp.88-89.) Finally, the court accepted Matney's guilty pleas after a lengthy colloquy to ensure that the pleas were knowing, voluntary, and intelligent. (R., pp.89-94.) Therefore, Matney's request to withdraw his guilty plea, which was based upon an implied assertion that he was unaware that he pled guilty to the persistent violator sentencing enhancement, was clearly belied by the record. The motion would consequently have been unsuccessful had Matney decided to pursue it.

Additionally, Matney failed to allege a nexus between the erroneous legal information allegedly provided by trial counsel and his own decision to withdraw the motion. A review of the sentencing hearing transcript reveals that Matney personally decided to withdraw his motion even after the district court indicated that he could choose to instead pursue it. After Matney informed the court that he wished to withdraw his request to withdraw his plea, the court asked Matney if he understood that it had the authority to impose up to a life sentence pursuant to the persistent violator sentencing enhancement. (R., p.76.) Matney responded that he did. (Id.) After noting that the "Part III" in the plea advisory signed by Matney referred to the persistent violator sentencing enhancement (R., p.77), the following colloquy occurred:

> Court: But what I want to know -- I mean, if you -- you have to be satisfied with this. I don't know -- and I -- and you need to understand that withdrawal of a guilty plea is not something that's automatic.
>
> Matney: I understand.

Court: If the judge has taken the plea and has gone through that, then that isn't something that just -- just because somebody changes their mind, that happens. There have to be grounds.

And -- but you need to understand that if -- if you're not satisfied with the record, if you have further questions, my -- my objective here is to make sure that you understand and that you know that when you go forward, you're subjected to up to life in the penitentiary.

If you need further clarification and explanation, you can have time to do that.

Matney: No. Let's just go ahead and proceed, Your Honor. I don't want to --

Court: Okay. I just want to make sure you understand. Because when somebody starts complaining later -- and it's really typical is that if they aren't satisfied they understand everything, you know, you can't complain about it later.

Matney: You made better light of it now that I got to see it. So -- you made a lot better light about it because I have not gotten a copy of [the plea advisory form].

(R., p.77.)

After the court again noted that the reference to "Part III" and "five to life" on the plea advisory form referred to the persistent violator sentencing enhancement, and after Matney asserted that he did not remember this information being contained on the form when he signed it, the colloquy continued:

Court: Yeah. And -- and the other thing, Mr. Matney, is I know you want to get it over with. But if you -- honestly, if you -- this is serious.

Matney: I understand, Your Honor.

Court: And with your history, it's very serious. You're looking at potentially a substantial sentence.

And if you need to have that time to listen and to make sure that you understand and have the attorneys go over with you what the criteria is, whether or not you even would have a chance to get it

withdrawn, and if you got it withdrawn, what the State would have to prove, which would be the -- the -- if you're talking about the Part II, which is, I think, the only thing that's been talked -- there isn't any confusion about, that -- what they'd have to prove in terms of prior judgments.

Matney: I'm ready to go forward, Your Honor.

Court: Okay.

Matney: I just -- I -- [trial counsel] just told me that. When Judge Goff had read through it and stuff, I was kind of emotional and stuff, and I didn't understand what was going on. And with him just bringing it to light, so I do understand.

Court: Okay.

Matney: Go forward.

(Id.)

The court thus repeatedly gave Matney the opportunity to recant his request to withdraw his motion to withdraw his guilty plea, or to take more time to consider whether to do so. The court also indicated to Matney that while withdrawal of his guilty pleas was not automatic, such a course could theoretically be available to him should he be able to demonstrate adequate grounds for withdrawal. Despite this questioning, Matney persistently maintained his chosen course of action to withdraw his request and proceed to sentencing. Because Matney failed to specifically allege a nexus between his trial counsel's alleged misstatement of the law and his own decision, even *after* thorough questioning from the court, to withdraw his request to withdraw his guilty pleas, he has failed to allege facts establishing Strickland prejudice with respect to this claim. In other words, Matney failed to allege facts demonstrating that he would have gone forward with his motion to withdraw if not for receiving the erroneous legal information from his trial counsel, even in light of the information and opportunity provided by the district court to pursue the motion.

Finally, on appeal, Matney contends that the district court utilized incorrect standards in summarily dismissing Claim 9(k). (Appellant's brief, pp.9-14.) Specifically, Matney notes that rather than express its conclusions in the proper framework of whether Matney failed to allege facts establishing a *prima facie* claim, the district court concluded that Matney failed to "*establish*[] either prong of the *Strickland* standard." (Appellant's brief, p.13 (citing R., p.156) (emphasis in Appellant's brief).) Matney also notes that the court concluded that Matney's motion to withdraw his pleas "most likely" would have been denied, when Matney only needed to allege facts demonstrating a *reasonable probability* of a different outcome absent trial counsel's deficient performance in order to make a prima facie showing of Strickland prejudice in the summary dismissal stage of the proceeding. (Appellant's brief, pp.13-14 (citing R., p.157).)

While the district court thus did not precisely reiterate the relevant legal standards when formulating some of its conclusions, its language was broad enough not to cast doubt on the underlying analysis which led to those conclusions. In its order summarily dismissing Matney's petition, the district court set forth the proper standards for both summary dismissal of post-conviction petitions (R., pp.145-146), and ineffective assistance of trial counsel claims pursuant to Strickland (R., pp.150-151). There is nothing about its conclusions, aside from the occasionally imprecise language in its summary statements as noted by Matney, indicating that the district court disregarded these standards that it accurately identified. In any event, this Court must analyze Matney's claim and the district court's findings and analysis utilizing the appropriate legal standards as accurately set forth both by the district court in its summary dismissal order, and by the state in motion for summary dismissal (R., pp.121-123); see also Section B, *supra* (Standard of Review). An appellate court may affirm a district court order on

any correct legal theory. See, e.g., State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997); State v. Diaz, 158 Idaho 629, 636, 349 P.3d 1220, 1227 (Ct. App. 2015).

Matney has failed to demonstrate that the district court erred by summarily dismissing his claim that his trial counsel was ineffective for giving him erroneous legal information regarding the possibility of withdrawing his guilty plea. This Court should therefore affirm the district court's summary dismissal of Matney's post-conviction petition.

CONCLUSION

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

DATED this 6th day of December, 2018.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of December, 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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MWO/dd