

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHASE ALEXANDER REED,)
) **No. 45678**
 Petitioner-Appellant,)
) **Kootenai County Case No.**
v.) **CV-2017-4573**
)
STATE OF IDAHO,)
)
 Defendant-Respondent.)
_____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

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STATEMENT OF THE CASE

Nature of the Case

Chase Alexander Reed appeals from the district court's order summarily dismissing his successive post-conviction petition.

Statement of Facts and Course of Proceedings

In October 2006, Reed pled guilty (Kootenai County Case No. CR-2005-23885), to lewd and lascivious conduct with a child under 16 (See Aug., p.1;¹ R., pp.70-73). The district court imposed a unified 20-year sentence with five years fixed, but suspended the sentence and placed Reed on probation. (See Aug., p.1; R., pp.70-73.) In 2010, after Reed violated his probation, the district court revoked probation and ordered Reed's sentence to be executed. (See Aug., p.1; R., pp.70-73.) Reed did not file an appeal from either his initial judgment of conviction, or from the order revoking probation. (See R., pp.70-73.)

In July 2016, Reed filed a motion in his underlying criminal case to vacate his convictions pursuant to I.R.C.P. 60(b). (See R., pp.26-27.) Reed argued that the district court had lacked jurisdiction over his underlying criminal case, and that the state failed to charge an offense. (See id.) Recognizing that Reed's motion was improperly filed under the controlling rules of criminal procedure, the district court construed the motion as a post-conviction petition (Kootenai County Case No. CV-2016-06174). (R., pp.28-34.) In August 2016, the district court summarily dismissed the petition on the ground that it was untimely, and because Reed's claims

¹ On August 23, 2018, the Idaho Supreme Court granted Reed's motion to augment the appellate record with the district court's October 23, 2017 order summarily dismissing Reed's June 2017 successive post-conviction petition. (8/23/18 Order.) In this brief, the state refers to this district court order as "Aug."

lacked merit. (R., pp.28-35.) Reed did not appeal from the district court's denial order. (See R., pp.69-70.)

In June 2017, Reed filed a *pro se* successive post-conviction petition (Kootenai County Case No. CV-2017-04573). (R., pp.4-16.) Reed raised the same claims as he did in his initial post-conviction petition. (Id.) Reed also appeared to allege that his conviction was invalid because it was not supported by evidence. (Id.) The state filed a motion to dismiss the petition on various grounds. (R., pp.17-21.) In October 2017, after a hearing (See generally Tr.), the district court granted the state's motion to dismiss, concluding: (1) Reed's petition, if construed as an initial post-conviction petition, was untimely; (2) Reed's petition, if construed as a successive petition, was barred by I.C. § 19-4908; (3) Reed's claims were barred by the doctrine of *res judicata* because Reed previously raised them in his I.R.C.P. 60(b)/initial post-conviction petition and the court had rejected them on their merits; and (4) Reed's successive post-conviction claims were supported only by conclusory allegations. (Aug., pp.4-11.)

Pursuant to the "mailbox rule," Reed filed a notice of appeal timely from the district court's October 24, 2017 order denying his successive post-conviction petition. (R., pp.85-89; see also 2/22/18 Order Reinstating Appeal.) The district court appointed counsel to represent Reed in his successive post-conviction appeal. (R., pp.113-114.) However, the Idaho Supreme Court granted appointed counsel's motion to withdraw after counsel failed to identify a viable appellate issue. (8/20/18 SAPD Motion to Withdraw and Memorandum and Affidavit in Support; 8/21/18 Order.) Reed proceeds *pro se*. (See Appellant's brief.²)

² The state notes that Reed submitted a premature Appellant's brief shortly after he filed his notice of appeal. (R., pp.85-95.) The state responds only to Reed's October 2017 Appellant's brief filed after the Idaho Supreme Court permitted the SAPD to withdraw, and after the briefing schedule was resumed. (See 9/14/18 Order.)

ISSUES

Reed states the issues on appeal as:

- (1) Did anything Appellant filed ever get treated as Pro-Se? No, Repeatedly Respondent and the District court Judge pretended that appellant had filed paperwork that they found unintelligible, instead of treating Appellant like a person inexperienced with filing in a court. see Exhibit (E) pg. 6 line 3-7 and pg. 7 like 11 to pg. 8 line 5, where the Respondent and the Judge talk of my amended post-conviction, which was clearly labeled as an amended post-conviction, but which was ignored by the court.
- (2) Was Idaho Required to summon a Grand Jury? Yes, but see Exhibit (G) pg. 6 where the District Judge states that Idaho is not required to summon a Grand Jury, The U.S. Constitution does require this in the 5th Amend.
- (3) Is Appellant[‘]s argument about CV-2016-6174 having been dismissed without affording him a chance to respond harmless error as stated in Exhibit (E) pg. 12 line 1-12? No, see Case (1) A.B. – 3.
- (4) Is Appellant Time-Barred? No, Appellant is claiming Actual Innocence, fraud, Manifest Injustice, and failure to charge an offense due to lack of felony subject-matter jurisdiction.
- (5) Did motion to amend post-conviction dated 8/7/2017 get put on the docket and looked at? yes on docket, no on looking at it.
- (6) Is Appellant’s guilty plea valid? not without corraberating [sic] evidence, of which there is none. See Table of cases and authorities, case (3).
- (7) Has subject-matter jurisdiction been retained? Not without some evidence that a crime has been committed.

(Appellant’s brief, pp.7-8 (capitalization as in original, some spacing modified)).

The state rephrases the issues on appeal as:

1. Does this Court lack jurisdiction over most of the issues Reed attempts to raise on appeal?
2. Has Reed failed to show that the district court erred in summarily dismissing his successive post-conviction petition?

ARGUMENT

I.

This Court Lacks Jurisdiction Over Most Of The Issues Reed Attempts To Raise On Appeal

A. Introduction

Reed's notice of appeal was timely only from the district court's October 2017 summary dismissal of his successive post-conviction petition. This Court has appellate jurisdiction only over assertions of error related to that order. Therefore, Reed's appellate claims asserting error in the underlying criminal proceeding and initial post-conviction petition are not properly before this Court and should not be considered.

B. Standard Of Review

“A question of jurisdiction is fundamental; it cannot be ignored when brought to [the appellate courts'] attention and should be addressed prior to considering the merits of an appeal.” State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003) (quoting H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987)). Whether a court has jurisdiction is a question of law, given free review. Kavajecz, 139 Idaho at 483, 80 P.3d at 1084.

C. This Court Has Appellate Jurisdiction Only Over Assertions Of Error Related To The District Court's October 2017 Summary Dismissal Of Reed's Successive Post-Conviction Petition

An appeal from the district court “may be made only by physically filing a notice of appeal ... within 42 days” of an appealable order. I.A.R. 14(a). A timely filed notice of appeal is a prerequisite to appellate jurisdiction. I.A.R. 21; State v. Payan, 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996); State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983). The failure to file a notice of appeal within the time limits prescribed by the appellate rules requires “automatic

dismissal” of the appeal. I.A.R. 21; see also State v. Tucker, 103 Idaho 885, 888, 655 P.2d 92, 95 (1982).

Therefore, where a notice of appeal is timely only from a particular order, the issues on appeal are confined to that order. State v. Dryden, 105 Idaho 848, 852, 673 P.2d 809, 813 (Ct. App. 1983); see also State v. Russell, 122 Idaho 488, 489 n.1, 835 P.2d 1299, 1300 n.1 (1992) (no appellate jurisdiction to consider original final judgment of conviction where appeal was only timely to challenge probation revocation); State v. Jensen, 138 Idaho 941, 943-944, 71 P.3d 1088, 1090-1091 (Ct. App. 2003) (no appellate jurisdiction to consider defendant’s claim of double jeopardy where defendant’s notice of appeal was only timely as to the order revoking his probation); Tucker, 103 Idaho at 888, 655 P.2d at 95 (no appellate jurisdiction to entertain the question of whether the district court could lawfully enhance defendant’s sentence where the notice of appeal was filed after the order revoking probation was entered and more than one year from the date of the original sentence). Contrary to Reed’s persistent assertions, Idaho law does not permit him to raise any claim in the manner of his choosing; instead, claims become jurisdictionally and procedurally barred if not timely raised in the proper manner.

In this case, Reed placed his notice of appeal in the prison mailing system on December 3, 2017. (R., pp.85-89.) Pursuant to I.A.R. 14(a), this notice was timely from the district court’s October 24, 2017 order denying Reed’s June 2017 successive post-conviction petition, but not from the court’s August 2016 dismissal of Reed’s initial post-conviction petition/I.R.C.P. 60(b) motion, Reed’s 2006 judgment of conviction, or the court’s 2010 order revoking Reed’s probation and ordering executed his originally imposed sentence. This Court therefore has appellate jurisdiction over only Reed’s challenges to the district court’s October 2017 summary dismissal order of Reed’s successive post-conviction petition.

However, most of the claims asserted in Reed's Appellant's brief do not assert error in the district court's stated grounds of dismissal of his successive post-conviction petition, but instead relate to other judgments over which this Court lacks jurisdiction. For example, Reed appears to contend that the court violated his Fifth Amendment right to indictment by grand jury, that there was no evidence submitted to support his guilty plea, that the district court failed to address several of his 2016 requests for documents, that the court failed to provide him 20 days' notice before summarily dismissing his *initial* post-conviction petition as required by I.C. § 19-4906(b), and that his trial counsel was ineffective for permitting him to plead guilty. (See generally Appellant's brief.) This Court lacks jurisdiction to consider these claims because they do not assign error to the district court's stated grounds for its summary dismissal of Reed's successive post-conviction petition.³

Because this Court lacks appellate jurisdiction over each of the claims Reed attempts to raise in his Appellant's brief, with the exception of the claims discussed below, this Court should decline to consider these claims.

³ In any event, the state notes: (1) While the Fifth Amendment guarantees the right to indictment by a grand jury to defendants in *federal* criminal proceedings, this right has not been incorporated to the states, and the United States Supreme Court has long held that there is no federally protected right to indictment by a grand jury in *state* criminal proceedings. Hurtado v. California, 110 U.S. 516, 534-535 (1884); Alexander v. Louisiana, 405 U.S. 625, 633 (1972); and (2) when Reed pled guilty to lewd conduct, he admitted his guilt and relieved the state of its duty to present evidence, see, e.g., State v. Kelchner, 130 Idaho 37, 39, 936 P.2d 680, 682 (1997).

II.
Reed Has Failed To Show That The District Court Erred In Summarily Dismissing His
Successive Post-Conviction Petition

A. Introduction

Reed contends that the district court erred by summarily dismissing his successive post-conviction petition. (See generally Appellant’s brief.) Specifically, Reed appears to contend: (1) the district court erred by concluding that his successive petition was untimely; and (2) the district court erred by “ignoring” his attempts to amend his successive post-conviction petition. (Id.) A review of the record reveals that Reed’s claims of error fail and that the district court properly dismissed his successive petition.

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).

When the basis for a trial court’s ruling is not challenged on appeal, the appellate court will affirm on the unchallenged basis. State v. Goodwin, 131 Idaho 364, 366-67, 956 P.2d 1311, 1313-14 (Ct. App. 1998).

C. The District Court Properly Dismissed Reed’s Successive Post-Conviction Petition

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to

relief. Workman, 144 Idaho at 522, 164 P.3d at 802; State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983).

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).

In this case, the district court summarily dismissed Reed's successive petition on numerous grounds. The court concluded: (1) Reed's petition, if construed as an initial post-conviction petition, was untimely; (2) Reed's petition, if construed as a successive petition, was barred by I.C. § 19-4908; (3) Reed's claims were barred by the doctrine of *res judicata* because Reed previously raised them in his I.R.C.P. 60(b)/initial post-conviction petition and the court had rejected them on their merits; and (4) Reed's successive post-conviction claims failed on the merits because they were supported only by conclusory allegations. (Aug., pp.4-11.)

On appeal, Reed does not challenge the district court's determinations with respect to each of these grounds. Instead, with respect to the successive post-conviction proceeding, Reed appears to allege only: (1) the district court erred by determining that his successive petition was untimely; and (2) the district court erred by ignoring his August 2017 amendment to his post-conviction petition. (See generally Appellant's brief.) Because Reed has not challenged each of the district court's stated grounds for dismissal, this Court can simply affirm the district court's summary dismissal order on any of the grounds Reed does not challenge. Goodwin, 131 Idaho at 366-67, 956 P.2d at 1313-14. In any event, Reed's arguments fail.⁴

1. Reed's Successive Post-Conviction Petition Was Untimely

Idaho Code § 19-4902(a) requires that a post-conviction proceeding be commenced by filing a petition "any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of proceedings following an appeal, whichever is later." "In Idaho, equitable tolling of the statute of limitation for filing a post-conviction petition has been recognized" in two circumstances: (1) "where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials"; and (2) "where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents petitioner from earlier pursuing challenges to his conviction." Kriebel v. State, 148 Idaho 188, 190, 219 P.3d 1204, 1206 (Ct. App. 2009) (citations omitted).

A successive petition for post-conviction relief is generally not permissible. I.C. § 19-4908 (claims not raised in initial post-conviction proceedings generally waived). Only in cases

⁴ Should this Court construe Reed's brief in any other manner than the state has, the state adopts the reasoning set forth in the district court's dismissal order with respect to each of its grounds for dismissal. (Aug., pp.4-11.)

where the petitioner can show “sufficient reason” why claims were “inadequately presented in the original case” may he have the opportunity to re-litigate them. Griffin v. State, 142 Idaho 438, 441, 128 P.3d 975, 978 (Ct. App. 2006) (citation omitted); see also I.C. § 19-4908. An analysis of whether “sufficient reason” exists to file a successive petition includes an analysis of whether the petition was filed within a “reasonable time” after the petitioner’s discovery of the factual basis for the claim. Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007). “In determining what a reasonable time is for filing a successive petition, [the court] will simply consider it on a case-by-case basis, as has been done in capital cases.” Id. at 905, 174 P.3d at 875.

In this case, the district court correctly concluded that, if Reed’s June 2017 petition were construed as Reed’s initial post-conviction petition, it was clearly untimely from both the date upon which his judgment became final (December 6, 2006), and from the date upon which the time to appeal from the district court’s revocation of probation expired (September 21, 2010). (Aug, pp.4-6.) The court also concluded that Reed failed to present any evidence that would support any equitable tolling of the post-conviction statute of limitations. (Aug., pp.5-6.)

The district court did not expressly consider whether Reed’s June 2017 petition, if construed as a successive petition, was untimely pursuant to the Charboneau “reasonable time” standard. However, in its motion for summary dismissal and reply brief, the state cited this standard – thus providing Reed notice of this ground for dismissal.⁵ (R., pp.19-20, 62-63.)

⁵ Where the district court grants a party’s motion for summary dismissal pursuant to I.C. § 19-4906(c), the motion itself serves as the notice, and no additional notice from the court of the dismissal is necessary. Workman, 144 Idaho at 523-524, 164 P.3d at 803-804 (citing Saykhamchone v. State, 127 Idaho 319, 322, 900 P.2d 795, 798 (1995)); see also Buss v. State, 147 Idaho 514, 517, 211 P.3d 123, 126 (Ct. App. 2009). In such a scenario, a petitioner is instead entitled to 20 days’ notice from the state’s motion for summary dismissal before his petition can be dismissed by the court. See Saykhamchone, 127 Idaho at 322, 900 P.2d at 798.

Below and on appeal, Reed has not argued that his June 2017 petition was timely pursuant to I.C. § 19-4902(a) or the Charboneau standard, that he was entitled to equitable tolling due to his incarceration status or mental issues, or that the district court erred in reaching the conclusions it did regarding the timeliness of his petition. (See Appellant’s brief; R., pp.4-8, 40-44, 52-58, 75-77.) Instead, Reed appears to assert that his June 2017 petition should have been deemed timely due to “Actual Innocence, fraud, Manifest Injustice, and failure to charge an offense due to lack of felony subject-matter jurisdiction.” (Appellant’s brief, p.7.) Leaving aside the conclusory nature of such assertions, Reed has not cited any case or statute standing for the proposition that such things toll the post-conviction statute of limitations. In any event, such an argument is waived because Reed did not present it to the district court below. State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) (appellate court review is limited to the evidence, theories, and arguments that were presented below and that parties are precluded from presenting legal questions and theories on appeal different than the ones they presented to the lower court). Therefore, Reed has failed to demonstrate that the district court erred by determining that his June 2017 successive petition was untimely.

2. The District Court Did Not “Ignore” Reed’s Supplemental Filings

After Reed filed his June 2017 petition, he filed a “Motion to amend post-conviction” (R., pp.40-51); and “Motion requesting review of amended post-conviction petition” (R., pp.55-58). These filings contain additional argument and authorities in support of Reed’s June 2017 successive petition. (R., pp.40-51, 55-58.) On appeal, Reed contends that the district court erred by “ignor[ing]” these filings. (Appellant’s brief, p.7.) Reed’s argument fails.

A review of the district court’s summary dismissal order shows that the court did consider the arguments raised in Reed’s supplemental filings. The court specifically referenced Reed’s

amended petition in its factual and procedural background statement (Aug., p.2), and in its analysis ultimately concluding that Reed’s claims were conclusory (Aug., p.10). Additionally, in its dismissal order, the court referenced at least one of Reed’s assertions – that the public defender “colluded” with the prosecution and court to prevent Reed from exercising his constitutional rights – that appears only in Reed’s supplemental filings. (Aug., p.10; R., p.43.) Further, Reed has not identified any claim or argument in his supplemental filings that was both not in his initial petition, and that would overcome the grounds for dismissal as set forth in the court’s summary dismissal order. Therefore, it is clear that the district court did not, as Reed asserts, “ignore” his supplemental filings, and that, in any event, nothing in the supplemental filings would have changed the outcome of the successive post-conviction proceeding.⁶

CONCLUSION

The state respectfully requests that this Court affirm the district court’s order summarily dismissing Reed’s successive post-conviction petition.

DATED this 16th day of January, 2019.

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

⁶ For this reason, any error by the district court in failing to acknowledge or expressly consider any of Reed’s filings was also harmless. I.R.C.P. 61 (“Unless justice requires otherwise, no error in admitting or excluding evidence, or any other error by the court or a party, is ground for . . . disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 16th day of January, 2019, 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:

CHASE ALEXANDER REED
IDOC #83254
ISCC C-BLOCK 3-22-A
P. O. BOX 70010
BOISE, ID 83707

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

MWO/dd