1-3-2019

Eddington v. State Appellant's Reply Brief Dckt. 45803

IN THE SUPREME COURT OF THE STATE OF IDAHO

RONALD S. EDDINGTON,	)	
Petitioner/Appellant,	)	**Supreme Court Docket No. 45803-2018**
-vs-	)	
	)	**Ada County No. CVPC 2015 16861**
STATE OF IDAHO,	)	
Respondent.	)	

APPELLANT REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, in and for Ada County

---

Hon. Lynn Norton, District Judge

RONALD S. EDDINGTON, I000110732
Eagle Pass Correctional Facility
C Block 17
P. O. Box 849
410 S. Bibb Ave.
Eagle Pass, Texas 78853

REPRESENTATING HIMSELF,
PRO SE

LAWRENCE WASDEN
Attorney General
State of Idaho

JOHN C. McKINNEY
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208)-334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR
DEFENDANT-RESPONDENT

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

STATUES

Idaho Code, § 19-852

CASES

II. INTRODUCTION

Respondent argues that the District Court did not err in dismissing all of Mr. Eddington's claims after evidentiary hearing. However, the State's argument is both nonsensical and contrary to the facts and the law. The State applies great weight to the testimony of Michael Bartlett, but that is an inadequate finding as the evidence completely contradicts Mr. Bartlett's testimonial narrative. As Mr. Eddington put forth in his Appellant's Opening Brief, there is no evidentiary support for the dismissal of Mr. Eddington's claims. (See App. Brief.). For most of its argument, the State reiterates or simply defers to the District Court's dismissal with only a few specific arguments of its own. Since Mr. Eddington addressed the District Court's dismissal substantially in his Opening Brief, the State's individual arguments will be addressed in reply. Moreover, even though Respondent requested three separate extensions delaying this matter approximately three months, Respondent's substantial briefing amounted to only nine pages of argument. (Not including attached exhibit.).

III. ARGUMENT

Defendants are guaranteed effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Idaho Constitution Article 1 § 13; I. C. § 19-852. A claim of ineffective assistance of counsel is analyzed under Strickland v. Washington, 466 U.S. 668 (1984). To prevail, a petitioner must prove: 1) Counsel's performance was deficient in that it fell below standards of reasonable professional performance; and 2) this deficient performance was prejudicial. 466 U.S. at 689. However, if a petitioner can demonstrate that an actual conflict of interest adversely affected his lawyer's performance,

pursuant to U.S. and Idaho law, the second prong of the Strickland test demonstrating prejudice is presumed. Cuyler v. Sullivan, 446 U.S. 335, 348 (1980); Sparks v. State, 92 P. 3d 542, 548, 140 Idaho 292, 298 (Id. App. 2004).

The State submits no viable argument to refute the evidence presented by Mr. Eddington proving Mr. Bartlett's conflict of interest. The crux of the State's argument centers on Bartlett's testimony which, as shown in Mr. Eddington's extensive briefing, does not comport with the substantial weight of the evidence. "Credibility and weight of testimony are matters resolved by the trial court as trier of fact and will not be set aside on appeal unless clearly erroneous...". Stuart v. State, 127 Idaho 806, 907 P. 2d 783 (1995). As stated in United States v. Malpiedi, 62 F. 3d 465, 470 (2d. Cir. 1995), there is the question of whether an attorney accused of ineffective assistance of counsel can be expected to testify accurately in post-conviction proceedings. These very concerns were also raised in Mickens v. Taylor, 535 U.S. 160 (2002), where pecuniary and reputational interests create an incentive for false testimony. Mr. Bartlett clearly makes statements concerning his actions regarding his conflict of interest, pressuring Mr. Eddington to accept the plea, and the police audio interviews that are provably false and for which there is no evidence at all. (See App. Brief.).

Bartlett testified it was his strategic choice to hold out Diana's dismissal until Mr. Eddington pled guilty, yet states at the plea hearing that he's concerned that the State will claim Mr. Eddington aided and abetted her alleged crime. That State argues, "There is nothing inconsistent about trial counsel's concerns that further contact by Diana with Carrie could lead to criminal charges against either or both Diana or Eddington. The fact that Eddington's trial counsel expressed each concern in separate proceedings does not show they are inconsistent." (Resp. Brief, p.8.).

At the plea hearing on January 16, 2013, Bartlett clearly states, "my concern is that they will claim he is aiding and abetting that crime." (Ex. H (Tr., p. 7, Ls. 15-18.)). Had the charge against Diana been dismissed, there would be no concern for his client being implicated in a charge that had since been dismissed. Yet, inconceivably, this is what Bartlett claims he wanted despite his concerns it could lead to more charges against his client. This makes no sense and is not a realistic or reasonable explanation for how these cases were handled until their resolution.

In addition, buttressing his claim of holding over Diana's dismissal is his false assertion that Diana's case was not adverse to Mr. Eddington's. In his testimony, Bartlett is asked by Prosecutor Akamatsu, "Have you been able to come up with any adverse, directly adverse, situation that you can imagine between these two cases?" Bartlett answers, "No." (11/15 Ev. Hr. (Tr., p. 236, Ls. 1-4.)). However, as shown, Mr. Bartlett divulged a directly adverse situation that greatly concerned him at Mr. Eddington's plea hearing.

Neither the State (Akamatsu) nor the District Court could agree or explain why Diana's case was rescheduled for the day after her son's sentencing. And, in fact, came up with completely different theories. The Court attributed it's finding to testimony at the evidentiary hearing that Bartlett did not give. (R. 269) (See Ev. Hr. Trs.). Akamatsu contrarily asserts that Prosecutor Faulkner held out Diana's dismissal to protect her "star witness", Carrie Eddington. She does not explain why Faulkner would choose to schedule each dismissal for the day after Mr. Eddington's crucial hearings. (App. Brief, p. 17.).

In a nonsensical passage of Respondent's Brief, there is an attempt to explain away the importance of the rescheduling of Diana's dismissal for after the sentencing hearing. The State argues, "Instead of contending that dismissal of Diana's case was contingent on his acceptance of the State's plea offer, Eddington argues that such dismissal hinged upon the State's

satisfaction with his sentence. Eddington apparently understands that the rescheduling of his sentencing date could not have coerced his prior guilty plea. In short, the rescheduling of Eddington's sentencing date is irrelevant to his claim." (Resp. Brief, p. 7.).

As explained, in detail, in Appellant's Opening Brief, the relationship between Mr. Eddington's plea hearing and sentencing hearing, as well as Mr. Bartlett's conflict of interest, show that the State used Diana's dismissal to coerce Mr. Bartlett into furthering its interests regarding Mr. Eddington's case. Mr. Bartlett coerced his client to accept the plea the State wanted, and then the evidence shows the State refused to dismiss Diana's case until her son was sentenced, thus coercing Bartlett to refrain from defending Mr. Eddington at sentencing. This is what the facts and substantial evidence in the record show. (See Record, App. Brief.). This is the only reasonable explanation for the actions of all these actors. Bartlett's testimony is overwhelmingly rebutted by his stated awareness that he is concerned for his client's possible exposure to Diana's pending charge. (Ex. H.). Mr. Bartlett's "strategy" is rebutted by his acknowledgement of his extreme neglect and complete lack of awareness regarding Diana's no contact order with Carrie. (11/15 Ev. Hr. (Tr., pp. 267-269.)) (App. Brief, pp. 19-20).

It is important to note that both respondents and the District Court acknowledge in the dismissal and respondent's brief, respectively, that Mr. Eddington proved Mr. Bartlett was engaged in an actual conflict of interest. The Court states, "...Petitioner has failed to show by a preponderance of the evidence that any actual conflict was caused by Mr. Bartlett (sic) represented Petitioner and Petitioner's mother... But even if the first prong was met, the Petitioner has also failed to show by a preponderance of the evidence that he was prejudiced...". (R., p. 271) (Resp. Brief, p. 6). Although an actual conflict of interest presumes prejudice, Mr.

Eddington, through substantial evidence, has shown prejudice in all those claims. (See App. Brief.).

Respondent's Brief states, "Eddington's argument in regard to his third claim is, in large part, an unsubstantiated and subjective running account of what he ascribes were his, his trial counsel's, and the state's intentions and motivations leading up to the entry of his guilty pleas. (See generally Appellant's Brief pp. 21-31.)". This statement is, again, nonsensical as every paragraph of Mr. Eddington's argument regarding the third claim is imbued with multiple citings of the substantial and competent evidence proving this claim. Mr. Eddington's recitation of the fact, his application of the law, and his extensive analysis are completely ignored in Respondent's Brief. (See App. Brief.).

In a footnote of Respondent's Brief (Resp. Brief, p. 10.), Respondent states, "Although not directly relevant to the precise issue presented here, it is worth noting that, at his plea entry hearing, Eddington admitted he "threatened to shoot [Carrie] with a gun" which "created a well-founded fear in her that violence was imminent." (Pet. Ex. H, p. EE 49) 1/16/14 Tr., p. 19, Ls. 9-14))." It is relevant to this footnote that Mr. Eddington testified that at his jail meeting with Bartlett the night before the hearing Mr. Bartlett yelled to Mr. Eddington, "You're going to say exactly what I tell you to say at the hearing, and you're not going to change anything, or things won't move forward like they should." (11/15 Ev. Hr.) (Tr., p. 120, Ls. 22-25.)). Also, of relevance is that earlier in the hearing both prosecutor Faulkner and Bartlett alluded to Mr. Eddington's mother's case in open court to Judge Norton. (Ex. H.) (Tr., p. 7.)). The very issue that concerned Mr. Eddington was reinforced by the two attorneys. Also relevant, Mr. Eddington was, as the evidence shows, completely unaware of the content of Carrie's audio police interviews. Thus, impacting any informed decision regarding this plea. (Ex. 22, 23)

(App. Brief, p. 23, p. 38). Mr. Eddington, under coerced duress from his own attorney, unaware of all the necessary information in his case to make an informed decision, felt he had no other alternative but to comply, thus resulting in manifest injustice.

Regarding the fifth and sixth claims, the State, citing only testimony by Bartlett, argues, "The record clearly provides substantial evidence showing that Eddington's trial counsel listen (sic) to the audio recordings of Carrie's police interviews, therefore, no further comment on that point is warranted. (See 11/15/17, Tr., p. 245, Ls. 5-11.)." As shown in extensive detail in Appellant's Brief, every bit of evidence in the record disproves Bartlett's testimony that he listened to the audio interviews of Carrie. (See App. Brief.). In fact, except for the January 15, 2013 jail meeting with Mr. Eddington, Bartlett never talks about or even alludes to the audio interviews anywhere in the case. (See Exhibits.).

The State attempts to explain this away using Bartlett's own attempt to explain it away at the evidentiary hearing. Bartlett states, "Well, keep in mind, this is my notes. So, this police report we refer to discovery, all of discovery. Right? I'm not writing this for anyone other than myself, and I'm referencing the materials provided by the State that there wasn't any evidence of prior abuse." (11/15 Ev. Hr. (Tr, p. 248, Ls. 4-9.)) (Resp. Brief, p. 12). This explanation has no merit and is devoid of substance when held up to the evidence in the record. Mr. Bartlett's sentencing notes are only one example of the numerous evidentiary examples that prove Bartlett's testimony is false. (See Exhibits.) (See App. Brief.). Bartlett contradicts his own testimony in his closing argument at sentencing. Mr. Bartlett discusses a phone conversation he had with psychologist, Dr. Johnston. The subject of this conversation is the police reports and how Dr. Johnston used them to arrive at Mr. Eddington's risk to re-offend. Even though this would have been a necessary time to bring up the substantial evidence in the audio police

interviews, Bartlett does not do this. The police audio interviews, as in every other aspect of the case, are never mentioned by Bartlett. (Ex I (Tr., p. 91, Ls. 8-13.)). (App. Brief, p. 36.). When discussing the written police reports with Dr. Johnston, was Bartlett referring to the police reports as "all of discovery?" (Resp. Brief, p. 12.). The evidence shows that Dr. Johnston was not given the police audio interview CD's by Bartlett and the context of the conversation, as told by Bartlett, involves only the literal written police reports. (Ex. 11, I.). The substantial and competent evidence shows that Bartlett did not listen to the police audio interviews.

There is nothing ambiguous about Mr. Eddington's testimony regarding Mr. Bartlett's listening to the audio police interviews. (Resp. Brief, p. 11) (App. Brief, p. 33.). Left out of the state's argument is that based on Mr. Eddington's understanding that Bartlett had only listened to Mr. Eddington's police interrogation, Bartlett was asked at the January 15, 2013 jail meeting, by Eddington, if he had listened to the police audio interviews. Mr. Bartlett emphatically clarifies this issue by stating that Mr. Eddington's family, "couldn't afford for him to listen to all of the audios." (11/15 Ev. Hr. (Tr., p. 118.)). And, as shown, the substantial evidence presented overwhelmingly reinforces Mr. Bartlett's statement to Mr. Eddington that he did not listen to these interviews. (App. Brief, pp. 23-49.). (See Entire Record.).

The State argues that Mr. Eddington's email and phone records were not submitted as evidentiary exhibits at the hearings. (Resp. Brief, p. 13.). Prosecutor Akamatsu questioned Mr. Eddington regarding this issue at the hearing. Ms. Akamatsu asks, "Mr. Eddington, you have failed to provide any of the records, cell phone or email records that you claim Mr. Bartlett should have gathered. Correct?" …., Mr. Eddington responds, "They were provided in the Rule 35, so the court has seen them." (11/15 Ev. Hr. (Tr., pp. 183-184)). And, in the dismissal, the Court acknowledges this very fact, "Petitioner testified he asked Bartlett to get copies of Ron's

phone records and emails so that they could refute Carrie's statements that Ron had called, or text excessively which Ron felt made him appear as an obsessed stalker at the sentencing hearing. These records were not presented to the Court at sentencing although they were included with Petitioner's Rule 35 request..." (R. 265.). This statement in the dismissal shows that the substance of the evidence in the email and phone records was known to the Court as there was nothing in the dismissal refuting Mr. Eddington's claim about these records. It's reasonable to state that the District Court would have used any contrary information regarding these records to aid its dismissal.

By the time of the sentencing hearing, it's reasonable to state that with the knowledge that there would be no adversarial challenge, Carrie and the State were able to present Mr. Eddington as a violent manipulative abuser and stalker with a narrative that was provably untrue. (Ex. H.). The facts showing there were legitimate challenges to Carrie's and the State's narrative at sentencing which were not made and the fact that there is no apparent reason to fail to make those challenges show that to not raise those challenges was the result of "inadequate preparation, ignorance of law, or other shortcomings capable of objective review." Pratt v. State, 134 Idaho 581, 584, 6 P. 3d 831, 834 (2000).

IV. CONCLUSION

Contrary to Respondent's very limited argument, Mr. Eddington, by a preponderance of the evidence, proved that his counsel Michael Bartlett provided ineffective assistance of counsel because of his actual conflict of interest, because he pressured Mr. Eddington into pleading guilty, and because he failed to listen to the audio police interviews. Mr. Eddington respectfully asks this Honorable Court that he be granted post-conviction relief, and that he be permitted to

withdraw his guilty plea, so he can defend himself from the charges pressed against him in the underlying criminal case.

RESPECTFULLY SUBMITTED this 2nd day of January 2019.

_____

Ronald S. Eddington, Appellant

RESPECTFULLY SUBMITTED this 2nd day of January 2019.

Ronald S. Eddington, Appellant

V. CERTIFICATE OF SERVICE

I hereby certify on January 2, 2019, I e-mailed a true and correct copy of the Appellant's Reply Brief to the following:

IDAHO SUPREME COURT
[redacted]

LAWRENCE G. WASDEN
Office of the Attorney General
State of Idaho
[redacted].

Diana Eddington