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Arellano v. State Respondent's Brief Dckt. 41995

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

JUAN MANUEL ARELLANO,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

No. 41995

Cassia Co. Case No.
CV-2013-390

BRIEF OF RESPONDENT

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

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District Judge

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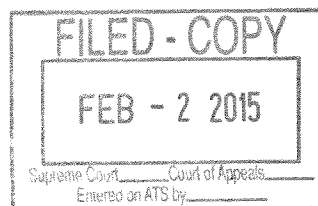


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STATEMENT OF THE CASE

Nature of the Case

Juan Manuel Arellano appeals from the summary dismissal of his petition for post-conviction relief.

Statement of Facts and Course of the Proceedings

Arellano pled guilty to first degree murder with an enhancement for the use of a firearm or deadly weapon. (R., p.124.) The court sentenced Arellano to a unified life sentence with the first 22-years fixed. (Id.) The court denied Arellano's Rule 35 motion. (Id.) The Court of Appeals affirmed Arellano's sentence on appeal. (Id.)

Arellano filed a *pro se* petition for post-conviction relief asserting some 64 ways¹ in which his trial counsel was ineffective. (R., pp.5-14.) The state moved for summary dismissal of the petition, asserting Arellano failed to raise a genuine issue of material fact. (R., pp.120-123.)

Following the submission by parties of briefs on the motion for summary dismissal, the district court issued an order granting the state's motion for summary disposition and entered a judgment of dismissal. (R., pp.167-184.)

Arellano timely appealed. (R., pp.200-203.)

¹ In its order granting summary disposition, the district court noted that Arellano's petition did "not contain a succinct list of issues[,]" but instead contained "an eight-page summary of perceived grievances, contextual details, and commentary." (R., p.169 n.1.)

ISSUE

Arellano states the issue on appeal as:

Did the district court err in summarily dismissing Mr. Arellano's claim that that [sic] his trial counsel failed to inform him that a homicide committed in the heat of passion is voluntary manslaughter, not murder, and that had his attorney informed him of this, he would not have pled guilty and would have taken his case to trial?

(Appellant's brief, p.5.)

The state rephrases the issue on appeal as:

Has Arellano failed to establish the district court erred in summarily dismissing his petition for post-conviction relief?

ARGUMENT

Arellano Has Failed To Carry His Appellate Burden Of Showing Error In The Summary Dismissal Of His Post-Conviction Petition

A. Introduction

In dismissing Arellano's petition for post-conviction relief, the district court pared down Arellano's eight pages of grievances to 14 claims of ineffective assistance of counsel. (R., pp.169-182.) On appeal, Arellano challenges only one of these. Arellano claims the district court erred in summarily dismissing his claim of ineffective assistance of trial counsel for "fail[ing] to explain to him that a killing conducted in the heat of passion is not murder." (Appellant's brief, p.6.) Arellano further asserts that had he been so informed, "he would not have pled guilty but would have taken his case to trial." (Id.) The trial court, Arellano argues, erred in summarily dismissing this claim where he had "raised a genuine issue of material fact which, if resolved in his favor, would entitle him to relief." (Id.)

Arellano's argument on appeal fails. He has not shown that the district court erred in summarily dismissing his post-conviction relief petition.

B. Standard Of Review

The appellate court exercises free review over the district court's application of the Uniform Post Conviction Procedure Act. Evensiosky v. State, 136 Idaho 189, 190, 30 P.3d 967, 968 (2001). On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to

determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

C. General Legal Standards Governing Post-Conviction Proceedings

A petition for post-conviction relief initiates a new and independent civil proceeding and the petitioner bears the burden of establishing, by a preponderance of the evidence, that he is entitled to relief. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). However, a petition for post-conviction relief differs from a complaint in an ordinary civil action. A petition must contain more than "a short and plain statement of the claim" that would suffice for a complaint. Workman, 144 Idaho at 522, 164 P.3d at 522 (referencing I.R.C.P. 8). The petitioner must submit verified facts within his personal knowledge and produce admissible evidence to support his allegations. Id. (citing I.C. § 19-4903). Furthermore, the factual showing in a post-conviction relief application must be in the form of evidence that would be admissible at an evidentiary hearing. Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 551 (1982); Cowger v. State, 132 Idaho 681, 684, 978 P.2d 241, 244 (Ct. App. 1999).

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. “To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 “if the applicant’s evidence raises no genuine issue of material fact” as to each element of petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, 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. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). If the alleged facts, even if true, would not entitle the petitioner to relief, the trial court is not required to conduct an evidentiary hearing prior to dismissing the petition. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)).

D. Arellano Has Failed To Establish That The District Court Erred In Summarily Dismissing His Claim Of Ineffective Assistance Of Trial Counsel

When a post-conviction petitioner alleges ineffective assistance of counsel, in order to survive summary dismissal of his petition, he must specifically show that “(1) a material issue of fact exists as to whether counsel’s performance was deficient, and (2) a material issue of fact exists as to whether

the deficiency prejudiced the applicant's case." Baldwin v. State, 145 Idaho 148, 153-54, 177 P.3d 362, 367-68 (2008) (internal citations omitted). "To establish deficient assistance, the burden is on the petitioner to show that his attorney's conduct fell below an objective standard of reasonableness. This objective standard embraces a strong presumption that trial counsel was competent and diligent." Id. "[S]trategic or tactical decisions 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." Id. "To establish prejudice, the claimant must show a reasonable probability that but for his attorney's deficient performance the outcome of the proceeding would have been different." Id.

On appeal, Arellano contests only the dismissal of one of the alleged bases of ineffective assistance of trial counsel, asserting the trial court erred in dismissing his petition because trial counsel was ineffective for failing to advise Arellano "that a killing committed in the heart of passion was not murder" and had he known that, "he would have rejected the plea offer and would have taken his case to trial." (Appellant's brief, p.8.) On appeal, Arellano claims he "provided evidence through his verified petition that he killed his wife in the heat of passion and that he informed his trial counsel of this; however, trial counsel told him that it was not a defense to murder." (Appellant's brief, p.8 (*citing* R., pp.10, 13).) Although Arellano does not indicate exactly what this evidence was, a review of the cited-to pages in his lengthy petition include the following:

29. Petitioner asserts that he lacked the ability to act deliberately and with violence against his wife, and the killing of his

wife occurred by accident because of the blind rage upon seeing her come back into the bar after her lover had escorted her out.

30. A jury would have been allowed to infer that the requisite mental state was lacking on all the assault charges as he was under the influence of two drugs and the culmination of emotions that his wife intentionally provoked.

...

33. Counsel failed to advise [sic] petitioner a defense to the required men rea of first degree murder was intoxication, by alcohol and cocaine. Petitioner submits that the impulse of acting was also influenced by the emotions he had. Petitioner asserts he was provoked by his wife.

(R., p.10.) Arellano further claimed:

51. No one knows why [sic] petitioner's intent was when he pulled out a gun and walked out onto the dance floor. All petitioner knows is that his emotions overwhelmed him, and wanted to rant and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passions as he was attempting to scare her. He never intended to kill her, but the rage within was so overwhelming that he was out of control and even more by the acts of others.

(R., p.13.) As it relates to the advice of his trial counsel, Arellano claimed in his petition for post-conviction relief that he "advised his attorney [of] his version," but counsel "insisted that some of these facts were irrelevant, and that if he went to trial he would be found guilty." (R., p.13.)

The district court, in determining Arellano failed to provide "admissible evidence to show that he would not have pled guilty and would have proceeded to trial but for [counsel's] alleged deficient performance," found:

He also contends that on the day he killed the victim, she had "provoked" him, he was in a "blind rage upon seeing her come back into the bar after her lover had escorted her out," "his emotions

overwhelmed him, and [he] wanted to rant and rave,” and “the rage within was so overwhelming that he was out of control and even more by the acts of others.” Mr. Arellano contends that [trial counsel] told him that evidence of the victim’s intentions and his mental state, as set forth above, was not relevant.

This claim is bare and conclusory as to the elements of a claim of ineffective assistance of counsel. Mr. Arellano has not provided admissible evidence to show that the foregoing evidence is relevant to the issues in the underlying case. He has not provided admissible evidence to show that [counsel’s] statement in this regard was incorrect.

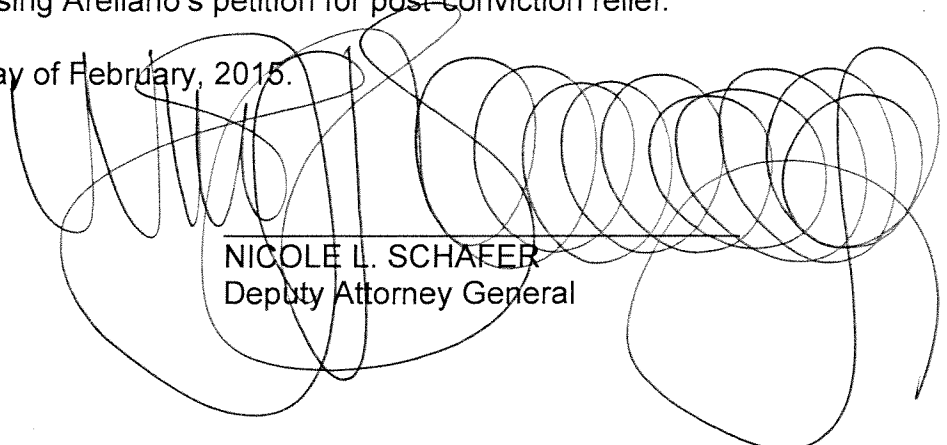
(R., p.176 (internal citations omitted).) The court correctly determined Arellano had failed to provide “admissible evidence establishing a *prima facie* case regarding this claim of ineffective assistance of counsel under *Strickland*” (R., p.177), specifically in light of the factual basis of Arellano’s *Alford* plea, included him taking a loaded gun with him to the bar and waiting for his wife to arrive, after telling others of his intent to kill her. (R., p.171.)

Because Arellano failed to provide admissible evidence establishing a *prima facie* case regarding his claim of ineffective assistance of counsel, there is no basis to reverse the district court’s order.

CONCLUSION

The state respectfully requests that this Court affirm the district court’s orders summarily dismissing Arellano’s petition for post-conviction relief.

DATED this 2nd day of February, 2015.



NICOLE L. SCHAFER
Deputy Attorney General

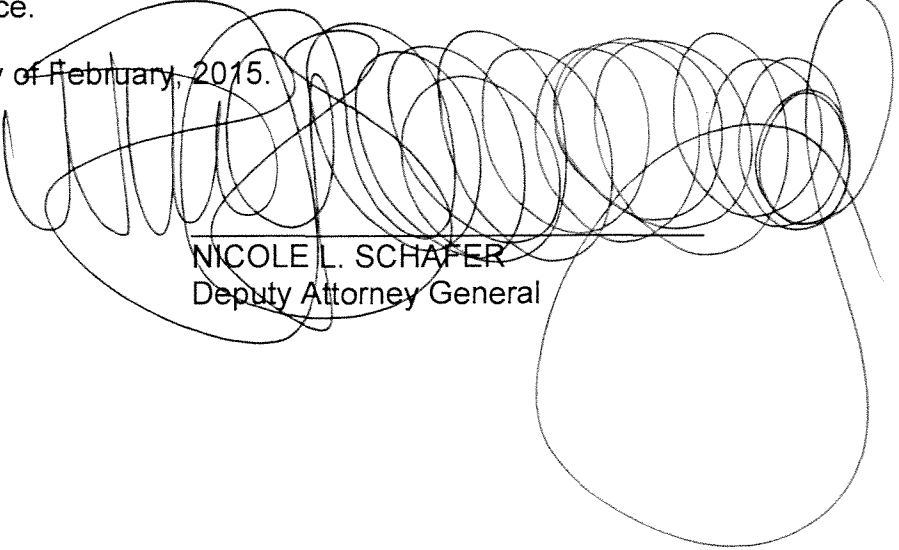
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of February, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

DATED this 2nd day of February, 2015.



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm