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Arellano v. State Appellant's Brief Dckt. 41995

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JUAN MANUEL ARELLANO,)	
)	NO. 41995
Petitioner-Appellant,)	
)	CASSIA COUNTY NO. CV 2013-390
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

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

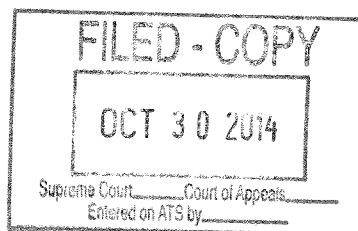
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STATEMENT OF THE CASE

Nature of the Case

Juan Arellano saw his wife in a bar with another man and he shot her, resulting in her death. Mr. Arellano pled guilty to first degree murder, admitting that he shot and killed his wife, but refusing to state that he acted with premeditation or malice aforethought, entering an *Alford*¹ plea to those elements. After Mr. Arellano's unified sentence of life, with 22 years fixed, was affirmed on direct appeal, he filed a timely Petition for Post-Conviction Relief asserting, among other claims, that 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. Mr. Arellano asserts that the district court erred in summarily dismissing this claim.

Statement of the Facts and Course of Proceedings

Juan Arellano was charged with the first degree murder of his wife, aggravated battery, and attempted murder, all of which were alleged to be enhanced by the use of a firearm. (R., pp.21-24.) Mr. Arellano reached an agreement with the State wherein he would plead guilty to the first degree murder charge and the associated weapons enhancement and would be free to argue an appropriate sentence, while the State would dismiss the remaining charges and argue for no more than a unified sentence of

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970) ("An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.").

life, with 22 years fixed. (R., pp.28-53.) However, when it came time to actually placing his guilty plea on the record, Mr. Arellano would not state that the shooting was premeditated or that he acted with malice aforethought, and the parties agreed that Mr. Arellano could enter an *Alford* plea to those specific elements. (R., pp.83-88.) Mr. Arellano was sentenced to a unified term of life, with 22 years fixed, and his sentence was affirmed on appeal. (R., pp.70-73, 89-97, 124-126.)

Mr. Arellano filed a timely verified Petition and Affidavit for Post Conviction Relief, generally asserting that his trial counsel was ineffective in advising him to plead guilty. (R., pp.5-97.) In his petition, Mr. Arellano made the following relevant factual assertions:

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 escorted her out.

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

...

51. No one knows what 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 [he] wanted to rant and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passion 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.

53. Under the professional norms, counsel's assistance amounted to incompetence. Counsel failed entirely in his representation.

54. Petitioner alleges he committed homicide and attempted assaults with a weapon in the heat of passion upon the appearance of his wife as she intentionally came back to the bar.

55. Counsel's representation was so seriously defective he was not functioning as the counsel guaranteed by the Sixth Amendment.

56. Petitioner asserts that there exist(s) a reasonable probability that but for counsel's representation, he would not have pleaded guilty and would have insisted on going to trial.

57. Counsel's failures prejudice(d) petitioner and if he would have fulfilled his obligations he would never have been convicted of any of the charges filed by information.

58. Petitioner advised his attorney (of) his version of the facts surrounding the death of his wife. Yet counsel insisted that some of those facts were irrelevant, and that if he went to trial he would be found guilty. As a result of counsel refusing to participate in petitioner's defense he entered a guilty plea.

(R., pp.10, 13.) The district court granted Mr. Arellano's motion for to the appointment of counsel. (R., pp.98-101, 111-112.)

The State filed an Answer and a motion for summary dismissal, and brief in support, generally claiming that Mr. Arellano's claims were bare and conclusory, not supported by admissible evidence, or should have been raised on direct appeal, and it requested the district court to dismiss the petition. (R., pp.113-116, 120-141.) Counsel for Mr. Arellano filed an objection to the State's motion for summary dismissal arguing, in part, "Petitioner avers that his counsel advised him that his mental state at the time of the alleged incident was not relevant to the case. This is clearly a significant issue that needs to be explored to determine the validity of the Defendant's entry of his Guilty Plea." (R., p.158 (citation omitted).)

The district court entered an order granting the State's motion for summary disposition. (R., pp.167-184.) Regarding what the court described as Mr. Arellano's

claim that trial counsel “advised Mr. Arellano to plead guilty to first degree murder ‘when the State would not be able to prove the charge,’” the court found the allegations were bare and conclusory and there was sufficient evidence to convict him of murder, and that Mr. Arellano failed to prove that his trial counsel’s advice to plead guilty was deficient “and that he suffered prejudice as a result.” (R., pp.170-171.) Mr. Arellano timely appealed from the district court’s final Judgment dismissing the petition. (R., pp.185-186, 200-203.)

ISSUE

Did the district court err in summarily dismissing Mr. Arellano's claim that that 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?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Arellano's Claim That That 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

A. Introduction

In his verified petition, Mr. Arellano made an un-rebutted claim that his trial counsel failed to explain to him that a killing conducted in the heat of passion is not murder, and that had his trial counsel informed him of this, he would not have pled guilty but would have taken his case to trial. As such, Mr. Arellano's claim raised a genuine issue of material fact which, if resolved in his favor, would entitle him to relief. The district court erred in summarily dismissing this claim.

B. Standards Of Review

A post-conviction petition initiates a proceeding that is civil in nature and, like a plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). However, unlike a plaintiff in other civil cases, the original post-conviction petition must allege more than merely "a short and plain statement of the claim." *Id.* at 443-444. The application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.* In addition, the post-conviction petition must set forth with specificity the legal grounds upon which the application is based. *Ridgley v. State*, 148 Idaho 671, 675 (2010).

A claim of ineffective assistance of counsel may properly be brought through post-conviction proceedings. *Thomas v. State*, 145 Idaho 765, 769, 185 P.3d 921, 925 (Ct. App. 2008). To prevail on a claim of ineffective assistance of counsel, a petitioner must first show that trial counsel's performance was constitutionally deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Aragon v. State*, 114 Idaho 758, 760 (1988). Where a defendant shows that his counsel was deficient, prejudice is shown if there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, at 694; *Aragon* at 760. Where a petitioner claims that his guilty plea was induced by the erroneous advice of counsel, the petitioner must demonstrate that, but for counsel's erroneous advice, the petitioner would not have entered into the plea agreement. *Hill v. Lockhart*, 474 U.S. 52, 59-60 (1985).

A district court may summarily dismiss a post-conviction petition only where the petition and evidence supporting the petition fail to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. "A material fact has 'some logical connection with the consequential facts[,]'" *Black's Law Dictionary*, 991 (7th Ed.1999), and therefore is determined by its relationship to the legal theories presented by the parties." *Id.* On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the appellate court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896 (Ct. App. 1993).

The United States Supreme Court has defined the standard for whether there exists a genuine issue of material fact as whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved in favor of either party.” *Id.* at 250. If a genuine factual issue is presented, an evidentiary hearing must be conducted. *Yakovac*, 145 Idaho at 444. The underlying facts alleged by the petitioner “must be regarded as true” for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009).

C. There Was A Genuine Issue Of Material Fact As To Whether Mr. Arellano’s Trial Counsel Failed To Advise Him That A Killing Done In The Heat Of Passion Is Not Murder; Thus, The District Court Erred In Summarily Dismissing This Claim

“Murder is the unlawful killing of a person ... with malice aforethought[.]” I.C. § 18-4001. Voluntary manslaughter is the unlawful killing of a person without malice upon a sudden quarrel of in the heat of passion. I.C. § 18-4006(1). Mr. Arellano 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. (R., pp.10, 13; see also R., p.158.) Furthermore, Mr. Arellano swore that had he known that a killing committed in the heat of passion was not murder, he would have rejected the plea offer and would have taken his case to trial. *Id.* Mr. Arellano’s allegations were not bare and conclusory; rather, they were

sworn statements regarding his own interactions with his counsel relevant to his ineffective assistance of counsel claim. The State did not present any evidence contradicting Mr. Arellano's claim in support of their motion for summary dismissal. As such, the district court erred in granting the State's motion for summary dismissal.

CONCLUSION

Mr. Arellano respectfully requests that this Court vacate the district court's summary dismissal of his claim that his plea was induced by a false promise made by his trial counsel, and remand this case for an evidentiary hearing.

DATED this 30th day of October, 2014.


JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of October, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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MICHAEL R CRABTREE
DISTRICT COURT JUDGE
E-MAILED BRIEF

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EVAN A. SMITH
Administrative Assistant

JCP/eas