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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**CARL ROBERT BETANCOURT,** )  
 ) **No. 46120**  
 **Petitioner-Appellant,** )  
 ) **Jerome County Case No.**  
 **v.** ) **CV27-2018-2559**  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Defendant-Respondent.** )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE JOHN K. BUTLER**  
**District Judge**  
\_\_\_\_\_

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**PRO SE**  
**PETITIONER-APPELLANT**

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## STATEMENT OF THE CASE

### Nature Of The Case

Carl Robert Betancourt appeals from the district court's judgment dismissing as untimely Betancourt's petition for post-conviction relief. Without addressing the untimeliness of his petition, Betancourt argues on appeal that his post-conviction claims had merit.

### Statement Of The Facts And Course Of The Proceedings

On September 9, 2013, Carl Robert Betancourt was sentenced to 2.5 years fixed and 11.5 years indeterminate for grand theft. (R., pp.4, 16-17.) He did not file an appeal from the judgment. (R., pp.5, 17.)

On March 21, 2018, Betancourt filed a petition for post-conviction relief. (R., pp.4-8.) He asserted several claims, including that he is actually innocent, that he entered his guilty plea involuntarily, and that his counsel in his criminal case provided ineffective assistance in various ways. (R., pp.5-6.) He also filed a motion seeking appointed counsel for the post-conviction proceedings. (R., pp.11-14.)

On March 27, 2018, the district court filed a notice of intent to dismiss Betancourt's petition for post-conviction relief. (R., pp.16-22.) In the notice, the district court took judicial notice of the following documents from Betancourt's underlying criminal case: the registrar of actions, the judgment of conviction entered on September 9, 2013, and an order entered on October 29, 2013, denying Betancourt's Rule 35 motion. (R., pp.19-20.) The notice also informed Betancourt that the district court "intend[ed] to dismiss the Petition for Post-Conviction Relief on the basis that it was not filed within one (1) year after the time for a direct appeal from the Judgment of Conviction expired." (R., p.21.) The district

court also denied Betancourt's motion to appoint counsel because "the petition for post-conviction relief was not timely filed and therefore the petition as presented to the court is frivolous." (R., p.20.)

On April 16, 2018, Betancourt filed a motion to reconsider. (R., pp.23-27.) Without addressing the untimeliness of his petition, Betancourt argued that his post-conviction claims had merit. (R., pp.23-27.)

On April 25, 2018, the district court issued an order dismissing Betancourt's petition and denying Betancourt's motion to reconsider the appointment of counsel. (R., pp.80-81.) The district court pointed out that Betancourt had "not responded to the issue of timeliness" and that "[t]here is nothing that an appointed counsel could do or argue to make petitioner's claims timely." (R., pp.80-81.) That same day, the district court entered judgment dismissing Betancourt's petition. (R., pp.83-84.)

Betancourt timely appealed. (R., pp.85-89.)

## ISSUES

The section of Betancourt's brief asserting the issues presented on appeal incorporates his table of contents and the top paragraph of his motion for reconsideration filed in the district court. (Appellant's brief, p.5.) His table of contents states:

1. Ineffective Counsel Assistance.
2. Actual Innocence.
3. 14<sup>th</sup> Amendment due Process violation.
4. Coerced Guilty Plea.
5. Counsel's failure to file A direct Appeal.

(Appellant's brief, p.2.) The first full paragraph in his motion to reconsider states the standard for obtaining appointed counsel in a post-conviction proceeding. (R., p.23.)

The state rephrases the issues as:

- I. Has Betancourt failed to show that the district court erred when it dismissed his post-conviction petition as untimely?
- II. Has Betancourt failed to show that the district court abused its discretion when it denied his motion to appoint counsel?

## ARGUMENT

### I.

#### The District Court Properly Dismissed Betancourt's Petition As Untimely

##### A. Introduction

The district court properly dismissed Betancourt's petition for post-conviction relief. Where, as here, no direct appeal is taken from the underlying judgment, a petition for post-conviction relief must be filed within one year of the expiration of the time for an appeal. Betancourt waited nearly four years after the time for his direct appeal had expired before filing his petition for post-conviction relief. He did not argue in the district court and has not argued on appeal that the one-year limitation should be equitably tolled. Because Betancourt filed his petition outside of the one-year limitation and has not argued for equitable tolling, the district court properly dismissed Betancourt's petition as untimely.

##### 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 fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party."

Charboneau v. State, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007).

##### C. The District Court Properly Dismissed Betancourt's Petition As Untimely Because Betancourt Filed His Petition More Than One Year After The Judgment Was Final

The district court properly dismissed Betancourt's petition for post-conviction relief as untimely. "Idaho Code § 19-4902 requires that post-conviction petitions be filed within one year from the expiration of the time for appeal, or from the determination of an appeal, or from the determination of a proceeding following an appeal." Charboneau, 144



Idaho at 904, 174 P.3d at 874; see I.C. § 19-4902. This statute “expressly limits a party’s time to bring a claim for post-conviction review to one year.” Vavold v. State, 148 Idaho 44, 45, 218 P.3d 388, 389 (2009) (quoting Evensiosky v. State, 136 Idaho 189, 191, 30 P.3d 967, 969 (2001)). A petition filed outside the one-year limitation is “facially barred by operation of I.C. § 19-4902(a)” and thus subject to summary dismissal. Id.; see Cuc Phuoc Ho v. State, 163 Idaho 173, 180, 408 P.3d 928, 935 (2017) (holding petition for post-conviction relief filed outside one-year limitation “was untimely and should have been dismissed”).

Betancourt’s petition was subject to summary dismissal because he filed his petition long after the one-year limitation expired. Betancourt’s sentence was imposed on September 9, 2013, and the district court entered judgment that same day. (R., pp.4, 16-17.) He did not file a direct appeal. (R., pp.5, 17.) His time for appeal expired on October 21, 2013—forty-two days after the judgment was entered. See I.A.R. 14. Betancourt thus had until October 21, 2014, to file a post-conviction petition within the one-year limitation period. See I.C. § 19-4902(a). He did not file his petition until March 21, 2018. (R., p.4.) Because Betancourt waited nearly four years after the expiration of the one-year limitation to file his petition, the district court properly dismissed his petition as untimely.

Notably, the record does not indicate—and Betancourt has not argued—that the one-year limitation should be equitably tolled. “Generally, equitable tolling is allowed only under exceptional circumstances beyond the petitioner’s control that prevented him or her from filing a timely petition.” Cuch Phuoc Ho, 163 Idaho at 179, 408 P.3d at 934. All of the evidence Betancourt filed in the district court to support his petition was available prior to the expiration of the one-year limitation. Specifically, Betancourt filed (1) his

affidavit, which states that he expressed his innocence throughout his criminal case, that he “was threatened by coercion to plea [sic] guilty,” and that the trial transcripts show he “was not the driver of said vehicle” (R., p.9); (2) a letter he authored dated April 6, 2013 (R., pp.30-33); and (3) a transcript of his preliminary hearing in the underlying criminal case held on April 19, 2013 (R., pp.34-78). Betancourt could have filed a petition for post-conviction relief within the one-year limitation that included all of that same information.

Furthermore, Betancourt has waived any equitable tolling argument. Betancourt did not explain in his petition why he filed it outside of the one-year limitation. (R., pp.4-8.) Even after the district court gave Betancourt notice that it intended to dismiss his petition as untimely, Betancourt made no argument as to timeliness in his motion to reconsider. (R., pp.23-27.) And, even after the district court dismissed Betancourt’s petition solely on the basis that it was untimely, Betancourt made no argument as to timeliness in his opening brief on appeal. (Appellant’s brief, pp.1-8.) He has thus waived any argument as to the timeliness of his petition, see State v. Gonzalez, No. 44534, slip op. at 6 (Idaho Feb. 20, 2019); State v. Garcia-Rodriguez, 162 Idaho 271, 274-76, 396 P.3d 700, 703-05 (2017), and the judgment dismissing Betancourt’s petition solely on the basis that his petition was untimely must be affirmed, see Lee v. Litster, 161 Idaho 546, 550, 388 P.3d 61, 65 (2016) (“[I]f an appellant fails to contest all of the grounds upon which a district court based its grant of summary judgment, the judgment must be affirmed.”); State v. Goodwin, 131 Idaho 364, 366-67, 956 P.2d 1311, 1313-14 (Ct. App. 1998). Because Betancourt filed his petition outside of the one-year limitation—and Betancourt has not even suggested the one-year limitation should be equitably tolled—the district court properly dismissed Betancourt’s petition as untimely.

## II.

### The District Court Properly Denied Betancourt's Motion For Appointed Counsel

#### A. Introduction

The district court did not abuse its discretion by denying Betancourt's motion for appointed counsel. The standard for appointing post-conviction counsel is whether the petition raises the possibility of a valid claim. The district court did not abuse its discretion by denying Betancourt's motion because his petition was time-barred and thus frivolous.

#### B. Standard Of Review

This Court reviews a district court's decision to grant or deny a request for court-appointed counsel for an abuse of discretion. Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004).

#### C. The District Court Properly Denied Betancourt's Motion For Appointed Counsel Because His Petition Was Untimely And Therefore Frivolous

The district court did not abuse its discretion by denying Betancourt's motion for appointed counsel because his petition was frivolous. A district court need not appoint counsel to champion a frivolous petition for post-conviction relief. See Murphy v. State, 156 Idaho 389, 393, 327 P.3d 365, 369 (2014). A time-barred petition for post-conviction relief is per se frivolous. See Hust v. State, 147 Idaho 682, 686, 214 P.3d 668, 672 (Ct. App. 2009). Because Betancourt's petition for post-conviction relief was time-barred, see Part I, his petition was frivolous. Accordingly, the district court could not have abused its discretion by denying Betancourt's motion for appointed counsel. See State v. Ochieng, 147 Idaho 621, 627, 213 P.3d 406, 412 (Ct. App. 2009) (holding district court did not abuse its discretion by denying motion for appointed counsel because petition was untimely).

CONCLUSION

The state respectfully requests this Court affirm the judgment dismissing Betancourt's petition for post-conviction relief.

DATED this 5th day of March, 2019.

/s/ Jeff Nye  
JEFF NYE  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 5th day of March, 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:

CARL ROBERT BETANCOURT  
IDOC #108805  
I.S.C.C.  
P. O. BOX 70010  
BOISE, ID 83707

/s/ Jeff Nye  
JEFF NYE  
Deputy Attorney General

JN/dd