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IN THE SUPREME COURT OF THE STATE OF IDAHO

JERMAINE JAMES ARRATS,

Petitioner-Appellant.

vs.

STATE OF IDAHO,

Respondent,

Supreme Court No. 46123

Ada County No. CV01-18-6776

BRIEF OF APPELLANT JERMAINE JAMES ARRATS

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE JASON D. SCOTT
District Judge

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II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the district court's judgment dismissing Appellant Jermaine James Arrats' petition for post-conviction relief without appointing counsel.

B. General Course of Proceedings

1. Underlying Criminal Proceedings

On August 30, 2016, Mr. Arrats jumped out of his motel window wearing only socks and underwear to escape people he believed were chasing him. R. 9. Mr. Arrats encountered a motorist, forcibly removed him from his vehicle and drove away. *Id.* The state charged Mr. Arrats with robbery in violation of I.C. §§ 18-6501 and -6502. R. 16. The parties entered an I.C.R. 11(f)(1)(C) plea agreement that contemplated an *Alford* plea and a stipulated sentence of a unified term of thirty years with a minimum period of confinement ten years. R. 9.

At the change of plea hearing, Mr. Arrats admitted removing the motorist and taking his vehicle. Tr. (45030)¹ p. 10, ln. 20 - p. 11, ln. 7; p. 12, ln. 22 - p. 13, ln. 4. However, Mr. Arrats explained that his conduct was not robbery because he only intended to escape harm and did not intend to keep the vehicle. *Id.* Trial counsel advised the district court that Mr. Arrats was willing to waive his factual defense in order to take advantage of the plea agreement. *Id.* at p. 11, ln. 20 - p. 12, ln. 3.

¹ Mr. Arrats is requesting that this Court judicially notice the transcripts prepared in Mr. Arrats underlying direct appeal, Docket Number 45030, in addition to documents presented in the district court.

The district court inquired whether Mr. Arrats was willing to accept the plea agreement despite lacking the intent required to commit robbery. Tr. (45030) p. 14, ln. 19 - p. 15, ln. 4. Mr. Arrats replied: “Yes, sir. I don't have a million dollars to pay for a high powered attorney to fight this case” *Id.* at p. 15, ln. 5-7. Upon inquiry, Mr. Arrats backtracked, indicating that appointed counsel was a good attorney but would not prevail given the case facts. *Id.* at p. 15, ln. 16 - p. 16, ln. 18.

The district court inquired whether Mr. Arrats was concerned that the trial evidence could cause the district court to impose a harsh sentence. *Id.* at p. 16, ln. 19-24. Mr. Arrats responded “yes” but continued: “plus I was in my underwear” running down Chinden, which reinforced that he did not have the intent to steal. *Id.* at p. 16, ln. 25 - p. 17, ln. 8. Mr. Arrats explained that 911 calls would show that methamphetamine caused him to hallucinate demons and that he had no plan to steal a car. *Id.* at p. 17, ln. 9-25.

The district court suggested presenting his defense to the jury and Mr. Arrats advised he was unwilling to risk a longer sentence after losing a jury trial. *Id.* at p. 18, ln. 1-25. Mr. Arrats advised he suffered from bipolar disorder and was not currently taking any medication. *Id.* at p. 22, ln. 21 - p. 23, ln. 9. Mr. Arrats otherwise responded appropriately during the remaining plea colloquy and the district court accepted the plea. *Id.* at p. 23, ln. 10 - p. 26, ln. 13.

At the time set for sentencing, the district court noted that Mr. Arrats was having “kind of an emotional reaction” and was contemplating withdrawing his plea and seeking a new attorney. *Id.* at p. 29, ln. 11 - p. 30, ln. 15. The district court suggested rescheduling the sentencing to allow Mr. Arrats additional time to consider his options. *Id.* at p. 30, ln. 15 - p. 31, ln. 6. Mr.

Arrats responded: “Today it's important that we do the sentencing,” while also indicating that he wanted a “fair trial with an attorney that has fire,” that a prison sentence was unwarranted and that he did not have the intent to steal the motorist’s vehicle. *Id.* at p. 31, ln. 11 - p. 33, ln. 12. Mr. Arrats also advised that his attorney had not provided him with full discovery, which was especially problematic because Mr. Arrats did not remember the night in question. *Id.* at p. 14, ln. 13-19.

The district court re-scheduled the sentencing for the following week, at which time counsel advised the district court that Mr. Arrats intended to proceed to sentencing but required time to review the pre-sentence investigation report. Tr. (45030 4-7-17) p. 5, ln. 6-14. Mr. Arrats advised the district court he intended to go forward with sentencing because his attorney advised him that he would be unable to establish his innocence at trial. *Id.* at p. 5, ln. 25 - p. 6, ln. 5. Mr. Arrats also indicated the ten year fixed term contemplated by the agreement seemed like “so freaking much” and he did not have the intent to steal. *Id.* at p. 6, ln. 22 - p. 7, ln. 25. Mr. Arrats indicated that while he “hated” his attorney but counsel was correct because “in the eyes of Idaho and the people of Idaho, this is a scary thing . . . a big black man drove a guy out of his car, forced himself into the car.” *Id.* at p. 8, ln. 18-22.

Ultimately, Mr. Arrats reaffirmed his desire to move forward with the sentencing, which was re-scheduled to afford the opportunity to review the pre-sentence investigation report. *Id.* at p. 9, ln. 20 - p. 10, ln. 20. On April 13, 2017, the district court sentenced Mr. Arrats in accord with the plea agreement. R. 16. Mr. Arrats thereafter challenged his sentence by filing a notice of appeal through counsel, filing a pro se notice of appeal, and a pro se ICR 35 motion. *Id.* On May

16, 2017, the district court denied the Rule 35 motion and Mr. Arrats filed another notice of appeal. *Id.* The district court's denial of the Rule 35 motion was affirmed on direct appeal. *State v. Arrats*, 2017 WL 5562527 (Idaho Ct. App. Nov. 20, 2017)

2. Post-Conviction Proceedings

On April 9, 2018, Mr. Arrats filed a petition for post-conviction relief, supporting affidavit and motion for appointment of counsel. R. 4-14. Echoing his statements throughout the criminal proceedings, Mr. Arrats alleged he did not have the intent to permanently deprive the motorist of his vehicle that he received ineffective assistance of counsel and that the district court violated his right to due process. R. 9- 11. Eight days later, the district court issued a notice of intent to dismiss finding that the petition was subject to summary dismissal. R. 16. The district court further denied Mr. Arrats' motion for the appointment of counsel and provided him thirty days in which to respond. R. 24. Mr. Arrats filed a response continuing to allege that the district court should have required a trial and that his counsel was ineffective for failing to present his defense. R. 26-61. The district court dismissed Mr. Arrats petition and entered judgment for the state. R. 33- 35. This appeal follows.

III. ISSUES PRESENTED ON APPEAL

1. Did the district court error in sua sponte summarily dismissing Mr. Arrats petition for post-conviction relief without judicially noticing the record?

1. Did the district court abuse its discretion by dismissing the petition for post-conviction relief without appointing counsel?

IV. ARGUMENT

A petition for post-conviction relief initiates a civil proceeding in which the petitioner must prove the allegations in his petition by a preponderance of evidence. I.C. § 19-4907; *Rhoades v. State*, 148 Idaho 247, 249, 220 P.3d 1066, 1068 (2009); *Keserovic v. State*, 158 Idaho 234, 238, 345 P.3d 1024, 1028 (Ct. App. 2015). A petition for post-conviction relief must be verified with respect to facts within the petitioner's personal knowledge, and affidavits, records, or other evidence supporting the petition's allegations must be attached or the petition must indicate the reason such supporting evidence is not included with the petition. I.C. § 19-4903; *see also Ash v. State*, 162 Idaho 535, 537, 400 P.3d 623, 625 (Ct. App. 2017).

Idaho Code § 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to a party's motion by or sua sponte, if the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See also Ash*, 162 Idaho at 538, 400 P.3d at 626. However, if a petitioner alleges facts that raise the possibility of a valid claim, the district court should appoint counsel in order to give the petitioner an opportunity to work with counsel and properly allege the necessary supporting facts. *Charboneau v. State*, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004); *Nelson v. State*, 157 Idaho 847, 854, 340 P.3d 1163, 1170 (Ct. App. 2014)

Here, the district court erred by summarily dismissing Mr. Arrats petition sus sponte without waiting for the state's response and after judicially noticing only limited portions of the

underlying criminal file. Moreover, Mr. Arrats' petition and the record establish the possibility of valid claims and the district court therefore abused its discretion in dismissing Mr. Arrats petition for post-conviction relief without first appointing counsel. Accordingly, this Court should reverse the district court's judgment and remand for further proceedings with the assistance counsel.

A. The District Court Erred In Sua Sponte Dismissing Mr. Arrats Petition For Post-Conviction Relief Without Judicially Noticing the Underlying Criminal Record

Pursuant to Idaho Code § 19-4906(a), the state must respond to the post-conviction petition "by answer or by motion" within 30 days and, if the record of the challenged proceedings is not attached to petition, the state must file the portions of the record "that are material to the questions raised in the application." Then, when "a court is satisfied, on the basis of the application, *the answer or motion, and the record*, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing." I.C. § 19-4906(b) (emphasis added). Section 19-4906(a) imposes the responsibility to pay for the transcripts on the state and if the state does not file all relevant portions of the transcript in compliance with this statute, the applicant may move the court to compel the state to do so. *Roman v. State*, 125 Idaho 644, 648, 873 P.2d 898, 902 (Ct. App. 1994); *see also Ruff v. Kincheloe*, 843 F.2d 1240, 1242 (9th Cir. 1988 (district court obliged to sua sponte obtain and examine state court exhibits under 28 U.S.C.A. § 2254(f) when the habeas petitioner is unable to produce the record based on indigency or other reason).

Here, the district court did not wait for the state to respond to the petition, instead electing to issue notice of intent to dismiss only eight days after the Mr. Arrats filed his petition. The district court decided that Mr. Arrats was entitled to neither counsel nor further proceedings after reviewing limited portions of the criminal file: on the information; the plea agreement; the presentence report; the judgment of conviction; the order appointing the SAPD; the Rule 35 motion and related motion for appointment of counsel; the order denying those motions; the four notices of appeal; and the direct appeal opinion. R. 17. Thus, the district court did not consider the transcripts of the change of plea and sentencing hearings in considering whether Mr. Arrats raised the possibility of valid claims regarding the validity of his plea and the effectiveness of his counsel during plea proceedings.

Nor did the district court notify Mr. Arrats his petition was deficient because records of the underlying proceedings were not included. It is essential that the district court provide adequate notice of claimed defects so the petitioner has an opportunity to respond and to give the trial court an adequate basis for deciding the need for counsel based upon the merits of the claims. *Charboneau*, 140 Idaho at 793, 102 P.3d at 1112.

The district court could not properly *sua sponte* dismiss under Section 19-4906(b) until it had considered respondent's "answer or motion, and the record," material to resolution of the claims raised in the application. Mr. Arrats challenged the voluntariness of his *Alford* plea and his the effectiveness of his attorney's assistance during plea proceedings. In addition to the records judicially noticed by the district court, the transcripts of the change of plea hearing and sentencing hearings were necessary to resolution of Mr. Arrats' claims. Accordingly, the district

court erred in summarily dismissing Mr. Arrats' petition for post-conviction relief and this case must be remanded for further proceedings.

B. Mr. Arrats Alleged Facts Showing the Possibility of Valid Claims and the District Court Abused its Discretion in Denying His Motion For Counsel and Summarily Dismissing His Post-Conviction Relief Petition

If a post-conviction petitioner is unable to pay for the expenses of representation, the trial court may appoint counsel to represent the petitioner in preparing the petition, in the trial court, and on appeal. I.C. § 19-4904. The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court. *Charboneau*, 140 Idaho at 792, 102 P.3d at 1111.

However, when considering a motion for appointment of counsel, the trial court must do more than determine whether the petition alleges a valid claim. *Swader v. State*, 143 Idaho 651, 654, 152 P.3d 12, 15 (2007). Instead, if a petitioner who alleges *facts* that raise to the *possibility* of a valid claim, the district court should appoint counsel and provide the petitioner an opportunity to work with counsel and properly allege the necessary supporting facts.

Charboneau, 140 Idaho at 793, 102 P.3d at 1112; *Nelson v. State*, 157 Idaho 847, 854, 340 P.3d 1163, 1170 (Ct. App. 2014). In this analysis, the district court should consider that petitions filed by a pro se petitioner may be conclusory and incomplete. *Newman v. State*, 140 Idaho 491, 493, 95 P.3d 642, 644 (Ct. App. 2004). An unrepresented petitioner “cannot be expected to know how to properly allege the necessary facts” and, thus, “every inference must run in the petitioner's favor where the petitioner is unrepresented at that time.” *Melton v. State*, 148 Idaho 339, 342, 223 P.3d 281, 284 (2009); *Charboneau*, 140 Idaho at 794, 102 P.3d at 1113. The district court

must give adequate notice of claimed defects so the petitioner has an opportunity to respond and to give the trial court an adequate basis for deciding the need for counsel based upon the merits of the claims. *Charboneau*, 140 Idaho at 793, 102 P.3d at 1112.

Here, the district court determined that Mr. Arrats was not entitled to the appointment of counsel because his post-conviction relief petition was subject to summary dismissal. R. 17-19, 24. However, the decision to appoint counsel and the decision on the merits of the petition if counsel is appointed are controlled by two different standards. *Swader*, 143 Idaho at 655, 152 P.3d at 16. The district court's notice includes a technical analysis of the legal insufficiency of Mr. Arrats' post-conviction claims and failed to meaningfully notify Mr. Arrats — a pro se prisoner untrained in the law — of deficiencies that he was capable of remedying.

Moreover, the district court penalized Mr. Arrats' lack of legal ability rather than consider the limitations of his pro se status. For instance, the district court noted that Mr. Arrats "confusingly" claimed that trial counsel provided ineffective assistance "during trial," despite the *Alford* plea. R. 20. Then, rather than analyze whether the alleged facts gave rise to a potentially valid claim, the district court analyzed whether Mr. Arrats pled sufficient facts to meet the elements of an ineffective assistance of counsel claim.

Mr. Arrats' limited legal knowledge is patent from his statements during the underlying criminal proceedings and his pleadings in this case. However, he has consistently expressed the *factual* circumstances he believes gives rise to relief, namely that he pleaded guilty despite repeated protestations of innocence because his attorney did not provide effective assistance.

The transcript from the change of plea hearing reveals that Mr. Arrats — who suffers from bipolar disorder— responded oddly and inconsistently to the district court’s inquiries regarding satisfaction with counsel and his desire to plead guilty. Mr. Arrats’ conduct in subsequent hearings also reveals a questionable understanding of the stipulated sentence contemplated by the plea agreement and problems with counsel, including the allegation Mr. Arrats had not been allowed to review discovery before entering a plea.

These facts give rise to the possibility that Mr. Arrats received ineffective assistance of counsel during the course of plea negotiations. The facts also give rise to the possibility of a valid claim that Mr. Arrats’ *Alford* plea was not knowing and voluntary. Such a claim is properly alleged in post-conviction relief unless the claim could have been raised on direct appeal without factual development, such as where the defendant filed a motion to withdraw guilty plea in the trial court. *See Mendiola v. State*, 150 Idaho 345, 349, 247 P.3d 210, 214 (Ct. App. 2010) (petitioner not barred from raising claims challenging guilty plea’s validity in post-conviction relief proceedings where no motion to withdraw the plea was filed and testimony at post-conviction evidentiary hearing provided information that was not presented to the district court); *see also Mata v. State*, 124 Idaho 588, 593–94, 861 P.2d 1253, 1258–59 (Ct. App. 1993) (petitioner raised constitutional challenge to validity of guilty plea, which may be asserted through a post-conviction relief application).

The district court abused its discretion in applying the erroneous standard to deny Mr. Arrats’ motion for counsel in its Notice of Intent to Dismiss, which failed afford Mr. Arrats with an opportunity to meaningfully respond and meet the correct standard. Moreover, Mr. Arrats’

petition alleges facts that raise the possibility of valid claims and the district court abused its discretion in dismissing his petition without first appointing counsel.

IV. CONCLUSION

For all the reasons stated above, Mr. Arrats asks this Court to reverse the judgment for the state and remand with instruction to appoint counsel.

Respectfully submitted this 6th day of February 2019

FYFFE LAW

/s/ Robyn Fyffe
ROBYN FYFFE
Attorney for Jermaine Arrats

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an electronic copy was served on Criminal Law Division of the Idaho Attorney General at ecf@ag.idaho.gov on February 6, 2019.

FYFFE LAW

/s/ Robyn Fyffe
ROBYN FYFFE