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IN THE SUPREME COURT OF THE STATE OF IDAHO

NICOLAS CAMARGO, JR.,)	
)	NO. 46415-2018
Petitioner-Appellant,)	
)	CANYON COUNTY NO. CV-2016-11749
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE GEORGE A. SOUTHWORTH
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Nicolas Camargo, Jr., appeals from the district court's order and judgment summarily dismissing his petition for post-conviction relief. On appeal, he contends that the district court erred by dismissing his petition because an evidentiary hearing was necessary to resolve a genuine issue of material fact on his ineffective assistance of counsel claim. He respectfully requests that this Court vacate the district court's judgment and remand this case for an evidentiary hearing.

Statement of Facts and Course of Proceedings

In May 2016, in CR-2016-6727, the State charged Mr. Camargo with grand theft by possession of stolen property. (R., pp.108–09, 124.) This charge arose from a traffic stop. (R., p.124; Aug. R.,¹ p.1.) Officer Barnes with the Nampa Police Department stopped a vehicle for failing to signal and eventually determined the vehicle was reported stolen. (Aug. R., p.1.) Mr. Camargo was in the driver's seat. (Aug. R., p.1.) Officer Barnes observed that Mr. Camargo was "acting very nervous" and "making sudden movements in the car." (Aug. R., p.1.) After Officer Barnes read Mr. Camargo his *Miranda*² rights, Mr. Camargo admitted Officer Barnes that he knew the car was stolen. (Aug. R., pp.1–2; *see also* R., p.93 (Prelim. Hr'g Tr.,³ p.15, L.19–p.16, L.2).)

¹ Contemporaneously with this brief's filing, Mr. Camargo has moved for judicial notice of the probable cause affidavit, which was reviewed by the district court in its notice of intent to dismiss. Citations to the probable cause affidavit will refer to "Aug. R."

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ Citations to the preliminary hearing transcript will refer first to the page number(s) in the clerk's record and, parenthetically, its internal pagination.

Pursuant to a plea agreement, Mr. Camargo pled guilty to an amended charge of operating a vehicle without the owner's consent. (R., p.124.) On September 22, 2016, the district court sentenced Mr. Camargo to three and one-half years, with one and one-half years fixed. (R., pp.109, 124.)

On November 29, 2016, Mr. Camargo filed a verified pro se petition for post-conviction relief. (R., pp.6–23.) He raised an ineffective assistance of counsel claim for his trial counsel's failure to file a motion to suppress his statements to Officer Barnes. (R., pp.15–19.) Mr. Camargo stated that he admitted to another officer during the traffic stop that he used methamphetamine the night before. (R., p.16.) "In truth," Mr. Camargo explained, he "had been awake for five (5) days prior to this incident." (R., p.16.) The day of the traffic stop, he consumed at least three grams of methamphetamine and one gram of heroin. (R., pp.16–17.) He stated that he was "clearly intoxicated during questioning" and therefore his *Miranda* waiver was not knowing, voluntary, and intelligent. (R., p.17.) He asserted that his trial counsel should have moved to suppress his statements. (R., pp.18–19.) In his affidavit, he similarly asserted that he consumed four grams of methamphetamine and one gram of heroin every day from March 18, 2016, to April 13, 2016 (the day of the traffic stop). (R., p.29.)

Along with his petition and affidavit, Mr. Camargo moved for the appointment of counsel and judicial notice of the evidence, statements, exhibits, transcripts, and police reports in the underlying criminal case. (R., pp.24–25, 26.) The district court granted his motion for counsel. (R., p.31.) On January 18, 2017, the State answered. (R., pp.48–50.) The State included multiple documents in the underlying case as exhibits, including the charging documents, judgment, Idaho Criminal Rule 35 motion and order, notice of appeal, and preliminary hearing transcript. (R., pp.49, 52–94.)

On January 12, 2018, the district court filed notice of its intent to dismiss Mr. Camargo's petition due to inactivity. (R., pp.99–100.) Six days later, through counsel, Mr. Camargo responded that he may want to dismiss the case, but he was recently re-arrested and had not confirmed the dismissal. (R., pp.102–03.) About one month later, the district court granted the parties' stipulation to continue the district court's dismissal deadline to April 2, 2018. (R., pp.104–05, 106.)

On April 2, 2018, Mr. Camargo, through counsel, filed a first amended verified petition for post-conviction relief. (R., pp.108–12.) He again alleged ineffective assistance of counsel for failing to file a motion to suppress:

Trial counsel failed to file a motion to suppress Petitioner's waiver of Miranda rights and subsequent confession due to intoxication. Petitioner did not knowingly or intelligently volunteer a confession due to his severe intoxication at the time of interrogation and this influenced the Petitioner's decision to plead guilty. Trial counsel's failure to do so fell beneath an objective standard of reasonableness and if they had performed differently, the result would have been different.

(R., p.109.) He asserted that his prior affidavit supported this amended petition. (R, p.110.) He also requested that the district court take judicial notice of the underlying criminal case. (R., p.111.)

On July 13, 2018, the district court filed another notice of intent to dismiss. (R., pp.124–31.) On the ineffective assistance of counsel claim, the district court determined, “[w]hile he very well may have been high,” Mr. Camargo's claim “that his waiver and subsequent confession were involuntary is belied by the record.” (R., p.128.) The district court recognized that intoxication alone does not automatically invalid a *Miranda* waiver, but it is one factor to consider in the totality of the circumstances. (R., p.128.) In light of this legal standard, the district court reasoned:

At the preliminary hearing, Corporal Huston testified that while observing an abandoned car, he noticed a male and female moving items from the abandoned car to another car. [(R., p.91 (Prelim. Hr’g Tr., p.10, Ls.5–10).)] He watched Camargo get into the car and pull out onto the roadway without using a blinker. [(R., p.91 (Prelim. Hr’g Tr., p.10, Ls.13–16).)] Officer Barnes initiated a traffic stop after receiving a call from Cpl. Huston and made contact with Camargo. [(R., p.92 (Prelim. Hr’g Tr., p.13, Ls.18–20).)] When asked, Camargo told Barnes was taking his passenger home. [(Aug. R., p.1.)]. When Barnes asked for his ID, Camargo said he did not have one, but provided his prison identification card. [(Aug. R., p.1.)]. According to Barnes, Camargo was “acting very nervous, making sudden movements” which prompted him to request backup. [(Aug. R., p.1.)]. When a K9 alerted on the vehicle, another officer removed Camargo from the car and searched the car, finding narcotics and paraphernalia. [(Aug. R., p.1.)].

When the plates and VIN indicated the car may have been stolen, Officer Barnes read Camargo his *Miranda* rights. [(Aug. R., p.1.)]. Camargo stated “he was driving the vehicle earlier around 16 Ave. N., where he found out the car was stolen.” [(Aug. R., p.1.)]. Nothing in the report indicated that Camargo was so intoxicated that he was unable to answer questions, unaware of his surroundings, or unable to drive. To the contrary, Camargo was able to drive, pull over when stopped, answer questions, provide identification, and walk without assistance. Nothing indicates he was so intoxicated that he did not knowingly and involuntarily waive his *Miranda* warnings by stating not only that he knew the car was stolen, but the time and place he found out it was stolen.

Camargo does not assert police coercion occurred and bases his argument solely on his alleged intoxication that counsel should have moved to suppress his statements. Based on this, Camargo failed to show that the Court would have suppressed the statements. As a result, Camargo has shown no resulting prejudice from the failure to file a suppression motion. This Court can only conclude that the decision by counsel was tactical and will not be second guessed on review.

(R., pp.129–30.) The district court notified Mr. Camargo of its intent to dismiss in thirty-five days. (R., p.131.) Also on July 13, 2018, the State moved for summary dismissal. (R., pp.133–39.) The State later answered the first amended verified petition. (R., pp.145–47.)

On July 26, 2018, the district court held a status conference. (R., p.148; *see generally* Tr., p.4, L.4–p.9, L.5.) At the hearing, Mr. Camargo acknowledged, “the law was correctly stated as far as intoxication relating to [sic] confession” and, later, the law in the district court’s notice was “on point.” (Tr., p.5, Ls.23–25, p.8, Ls.8–10.) Mr. Camargo did not respond to the district court’s notice of intent to dismiss. (R., p.150.) On October 1, 2018, the district court ordered to

dismiss Mr. Camargo's petition. (R., p.150.) The same day, the district court entered a final judgment dismissing the petition with prejudice. (R., p.152.) On October 5, 2018, Mr. Camargo filed a notice of appeal. (R., pp.157–59.)

ISSUE

Did the district court err when it summarily dismissed Mr. Camargo's petition for post-conviction relief?

ARGUMENT

The District Court Erred When It Summarily Dismissed Mr. Camargo's Petition For Post-Conviction Relief

A. Introduction

Ms. Camargo contends that the district court erred when it summarily dismissed his petition because an evidentiary hearing was necessary to resolve a genuine issue of material fact. Specifically, there was a genuine issue of a material fact as to whether Mr. Camargo was too intoxicated to waive his *Miranda* rights. Mr. Camargo submits that the district court should have held an evidentiary hearing to resolve this disputed fact.

B. Standard Of Review And Post-Conviction Jurisprudence

A petition for post-conviction relief is civil in nature. *State v. Dunlap*, 155 Idaho 345, 361 (2013).

Like a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than “a short and plain statement of the claim” that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*

Charboneau v. State, 144 Idaho 900, 903 (2007).

The district court can summarily dismiss or grant a petition for post-conviction relief if “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” I.C. § 19-4906(b), (c). “In considering summary dismissal of an application for post-conviction relief, the trial court must accept as true verified allegations of fact in the application or in supporting affidavits, no matter how incredible they may appear, unless they

have been disproved by other evidence in the record.” *Dunlap v. State*, 126 Idaho 901, 909 (Ct. App. 1995). The district court is “required to accept the petitioner’s un rebutted allegations as true, but need not accept the petitioner’s conclusions.” *Charboneau*, 144 Idaho at 903. 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). A petition for post-conviction relief based on a claim of ineffective assistance of counsel will “survive a motion for summary dismissal if the petitioner establishes: (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 petitioner’s case.” *Pratt v. State*, 134 Idaho 581, 583 (2000). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002).

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, 144 Idaho at 903. Because the evaluation of a motion for summary disposition does not involve the finding of contested facts by the district court, it necessarily involves only determinations of law. Accordingly, an appellate court reviews a district court’s summary dismissal order de novo. *Muchow v. State*, 142 Idaho 401, 402–03 (2006).

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. CONST. amend. VI. “[T]he right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14

(1970)). To succeed on an ineffective assistance of counsel claim, the petitioner must generally show that (1) his attorney’s performance did not meet “an objective standard of reasonableness,” and (2) his attorney’s deficient performance prejudiced him. *Id.* at 687–88. “When a claimant alleges ineffective assistance of counsel based on counsel’s failure to file a motion, a “critical inquiry is whether the motion, if filed, should have been granted. . . .” *Wurdemann v. State*, 161 Idaho 713, 717 (2017) (alteration in original) (quoting *Dunlap*, 155 Idaho at 385). If the Court determines “the motion, had it been filed, should have been granted, the petitioner is still required to overcome the presumption that the decision not to file the motion ‘was within the wide range of permissible discretion and trial strategy.’” *Id.* at 718 (emphasis omitted) (quoting *Estrada v. State*, 143 Idaho 558, 561 (2006)).

C. The District Court Erred In Summarily Dismissing Mr. Camargo’s Claim Of Ineffective Assistance Of Counsel For Failing To File A Motion To Suppress

Mr. Camargo asserts that the district court erred by dismissing his ineffective assistance of counsel claim because there was a genuine issue of material fact on his intoxication. Mr. Camargo provided admissible evidence of his intoxication, and that evidence arguably conflicted with Officer Barnes’s description of Mr. Camargo’s behavior. The district court should have held an evidentiary hearing to resolve this factual issue rather than conclude Officer Barnes’s affidavit disproved Mr. Camargo’s intoxication.

Mr. Camargo made a prima facie showing of intoxication, which could render his *Miranda* waiver involuntary. In his verified petition, signed and sworn by Mr. Camargo, he argued that his trial counsel should have filed motion to suppress his confession made after the *Miranda* warnings. (R., p.109.) He characterized his intoxication as “severe.” (R., p.109.) Similarly, he alleged in his affidavit that he had consumed four grams of methamphetamine and

one gram of heroin on the day of the traffic stop and had been using these drugs every day for at least a month prior. (R., p.29.) His verified petition incorporated his affidavit, and the district court referenced the affidavit in its notice of intent to dismiss. (R., pp.110, 129.) Mr. Camargo's allegations in his verified petition and affidavit are "fact[s] within his personal knowledge, to which he attested through sworn documents, and thus constitute[] admissible evidence." *Bias v. State*, 159 Idaho 696, 705 (2015) (citing *Baldwin v. State*, 145 Idaho 148, 155 (2008)). "This fact, if true, constitutes a prima facie showing sufficient to justify an evidentiary hearing" to determine Mr. Camargo's intoxication. *Id.*

Rejecting Mr. Camargo's sworn statements, the district court relied on Officer Barnes's description of the traffic stop to determine Mr. Camargo was not too intoxicated to waive his *Miranda* rights. The district court used the absence of information on intoxication to disprove it:

Nothing in the [probable cause] report indicated that Camargo was so intoxicated that he was unable to answer questions, unaware of his surroundings, or unable to drive. To the contrary, Camargo was able to drive, pull over when stopped, answer questions, provide identification, and walk without assistance. Nothing indicates he was so intoxicated that he did not knowingly and involuntarily waive his *Miranda* warnings by stating not only that he knew the car was stolen, but the time and place he found out it was stolen.

(R., p.129.) This information, however, establishes a genuine issue of material fact on Mr. Camargo's intoxication. "If such a factual issue is presented, an evidentiary hearing must be conducted." *State v. Yakovac*, 145 Idaho 437, 444 (2008) (citing *Gonzales v. State*, 120 Idaho 759, 763 (Ct. App. 1991)). If the facts were uncontroverted, "summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." *Id.* (quoting *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519 (1982)). But, here, the fact of Mr. Camargo's intoxication is disputed. Mr. Camargo offered admissible evidence on his severe intoxication at the time of the traffic

stop. In contrast, Officer Barnes's probable cause affidavit, while it may not disprove any level of intoxication, indicates Mr. Camargo was not so severely intoxicated as to limit his ability to participate in the stop. The district court erred by making a credibility determination and accepting Officer Barnes's version of events as true. It was improper for the district court to resolve this material factual conflict of intoxication at the summary dismissal stage. Due to this genuine issue of material fact, the district court should have held an evidentiary hearing to determine credibility and resolve whether Mr. Camargo was too intoxicated to waive his *Miranda* rights.

Construing all facts and reasonable inferences in Mr. Camargo's favor, he alleged sufficient facts to make a prima facie showing of ineffective assistance of counsel. The State has the burden to establish a knowing, voluntary, and intelligent *Miranda* waiver. *State v. Custodio*, 136 Idaho 197, 201 (Ct. App. 2001) (citing *State v. Luke*, 134 Idaho 294, 297 (2000)). The Court examines the totality of the circumstances surrounding the waiver. *Id.* at 201–02. Intoxication can render a waiver involuntary, but it is not an automatic invalidation of the waiver. *Id.* at 201–02; *see also State v. Mitchell*, 104 Idaho 493, 499 (1983) (same). Here, Mr. Camargo averred that he was severely intoxicated by daily methamphetamine and heroin use and thus unable to provide knowing, voluntary, and intelligent *Miranda* waiver. (R., p.109.) These facts, if true, establish that a motion to suppress would have been granted if filed, and there was no strategic or tactical reason not to file a winning motion to suppress Mr. Camargo's incriminating statements on his knowledge of the stolen car. He further alleged that his incriminating statements influenced his decision to plead guilty, and thus trial counsel's failure to file a motion to suppress was deficient performance. (R., p.109.) Finally, he alleged, if his trial counsel had filed the motion, the result of the entry of plea would have been different. (R., p.109.) Mr. Camargo made

a sufficient showing of deficient performance and prejudice, and therefore the district court erred by summarily dismissing this ineffective assistance of counsel claim.

CONCLUSION

Mr. Camargo respectfully requests that this Court vacate the district court's judgment and summary dismissal of his first amended verified petition for post-conviction relief and remand this case to the district court for an evidentiary hearing on his ineffective assistance of counsel claim.

DATED this 2nd day of April, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas»