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IN THE SUPREME COURT OF THE STATE OF IDAHO

VESTAL DEAN CAUDILL,)	
)	NO. 46427-2018
Petitioner-Appellant,)	
)	BONNEVILLE COUNTY
v.)	NO. CV-2018-1699
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE**

HONORABLE JOEL E. TINGEY
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	4
ARGUMENT	5
The District Court Erred In Denying Mr. Caudill’s Motion For Appointment Of Counsel	5
A. Introduction	5
B. Standard Of Review	5
C. The District Court Abused Its Discretion By Denying Mr. Caudill’s Motion For Appointment Of Counsel Because Mr. Caudill’s Petition Raised The Possibility Of A Valid Claim	6
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

Cases

Brown v. State, 135 Idaho 676 (2001).....7, 8

Charboneau v. State, 140 Idaho 789 (2004).....5, 7, 8

Lunneborg v. My Fun Life, 163 Idaho 856 (2018).....6, 9

Melton v. State, 148 Idaho 339 (2009).....6, 9

Murphy v. State, 156 Idaho 389 (2014).....9

Saykhamchone v. State, 127 Idaho 319 (1995).....2

Shackelford v. State, 160 Idaho 317 (2016)2, 8, 9

State v. Caudill, No. 45445, Unpublished Opinion No. 441 (Ct. App. May 4, 2018).....1

Swader v. State, 143 Idaho 651 (2007)6, 7

Vavold v. State, 148 Idaho 44 (2009).....7

Workman v. State, 144 Idaho 518 (2007).....9

Statutes

I.C. § 19-4904.....5

I.C. § 19-4906.....2

Rules

I.C.R. 351

STATEMENT OF THE CASE

Nature of the Case

Vestal Dean Caudill filed a timely petition for post-conviction relief asserting, *inter alia*, that his trial counsel was ineffective in failing to file a motion to suppress evidence of the traffic stop that resulted in the discovery of methamphetamine. Mr. Caudill contends that the district court applied an incorrect standard in denying Mr. Caudill's motion for the appointment of post-conviction counsel. Thus, Mr. Caudill asserts that the district court erred in failing to grant his motion for appointment of counsel and erred by summarily dismissing all of his claims, as there is a genuine issue of material fact as to whether his counsel's failure to file a motion to suppress constituted deficient performance. Mr. Caudill contends that these errors necessitate a remand of his case to the district court for appointment of counsel and an evidentiary hearing on his claims.

Statement of the Facts and Course of Proceedings

In 2017, Mr. Caudill pled guilty to one count of possessing methamphetamine in Bonneville County. (R., p.4.) He was sentenced to six years, with one year fixed. (R., p.4.) He filed an appeal timely from the district court's order denying his I.C.R. 35 motion for leniency, but that decision was affirmed on appeal. (*State v. Caudill*, No. 45445, Unpublished Opinion No. 441 (Ct. App. May 4, 2018).)

On March 23, 2018, Mr. Caudill filed a *pro se* Petition and Affidavit for Post Conviction Relief challenging his conviction for possession of methamphetamine following his plea of guilty. (R., pp.4-8.) Mr. Caudill asserted that he should be granted post-conviction relief because his counsel failed to represent his interests where Mr. Caudill's semi-truck was stopped but it was not loaded with hay, his permission to search the truck was not given, it was not a

routine traffic stop, and the officers gave conflicting reasons as to why they stopped Mr. Caudill's truck. (R., pp.6-7.) Mr. Caudill asserted that he should be granted post-conviction relief because of the ineffective assistance of his trial counsel. (R., pp.5-8.) Mr. Caudill asked that post-conviction counsel be appointed to represent him; he filed a motion and an affidavit in support of his request for appointment of counsel. (R., pp.9-12.)

Five days after the petition was filed, the district court filed a Notice of Intent to Dismiss Petition for Post-Conviction Relief. (R., pp.13-20.) The Notice of Intent gave Mr. Caudill 30 days notice of its intent to dismiss the petition. (R., p.19.) In the Notice, the district court also denied Mr. Caudill's motion requesting appointment of counsel to assist him. (R., pp.13, 16.) In denying Mr. Caudill's motion for counsel, the district court wrote:

Furthermore, appointment of counsel is only appropriate where the petitioner alleges facts to support a valid claim for relief. *Shackelford v. State*, 160 Idaho 317, 372 P.3d 372, 380 (2016). As discussed below, in the Court's opinion Caudill's claims do not state a valid claim for relief. Therefore, the Court denies his request for appointment of counsel at this time.

(R., p.16.) The district court found that Mr. Caudill failed to present evidence that his counsel's performance was deficient, and wrote that, even if there was a possibility that evidence could have been suppressed, that does not automatically mean that counsel breached the standard of care by not filing one. (R., p.18.) The district court also found that Mr. Caudill did not show how the result would have been different absent counsel's allegedly ineffective performance. (R., p.19.) The district court referred to the conviction in Bonneville County Case No. CR-2018-1699, and wrote that it had reviewed the record, but did not officially take judicial notice of the entire underlying criminal file.¹ (R., p.13.)

¹ The State did not file an Answer to Mr. Caudill's Petition or seek judicial notice of any portions of the record. *See Saykhamchone v. State*, 127 Idaho 319, 323 (1995) (holding that, pursuant to I.C. § 19-4906, "[c]ourts reviewing applications for post-conviction relief should have pertinent

Thirty-seven days after the Notice was filed, Mr. Caudill had not responded to the Notice, so the court dismissed the Petition for the reasons stated in its Notice. (R., pp.21-22.) Thereafter the district court entered a final Judgment. (R., pp.23-24.)

Mr. Caudill filed a Notice of Appeal timely from the district court's Judgment and the order summarily dismissing his Petition. (R., pp.25-29.)

portions of the trial record ready for review. If the petitioner fails to submit an adequate record, the state must do so.") Mr. Caudill has filed a motion for judicial notice contemporaneously with his Appellant's Brief.

ISSUE

Did the district court err in denying Mr. Caudill's motion for appointment of post-conviction counsel?

ARGUMENT

The District Court Erred In Denying Mr. Caudill's Motion For Appointment Of Counsel

A. Introduction

Mr. Caudill contends that his Petition and supporting materials satisfies the standard for appointment of counsel, *i.e.*, it raises the possibility of a valid claim. The district court did not act consistently with the applicable legal standards where it placed a much higher burden on Mr. Caudill by requiring him to “state a valid claim for relief.” The district court abused its discretion by applying the wrong legal standards when making its decision.

Therefore, Mr. Caudill requests that his case be remanded to the district court for appointment of counsel and for an evidentiary hearing on his claims.

B. Standard Of Review

“A request for appointment of counsel in a post conviction proceeding is governed by Idaho Code § 19-4904, which provides that in proceedings under the UPCPA [Uniform Post-Conviction Procedures Act], a court-appointed attorney ‘may be made available’ to an applicant who is unable to pay the costs of representation. The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court.” *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004).

In applying the abuse of discretion standard, the reviewing court examines whether the trial court:

(1) Correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863-64 (2018). Prior to determining whether the district court's error in failing to appoint counsel requires the case to be remanded, the reviewing court first examines whether the possibility of a valid claim exists. *Melton v. State*, 148 Idaho 339, 342 (2009).

C. The District Court Abused Its Discretion By Denying Mr. Caudill's Motion For Appointment Of Counsel Because Mr. Caudill's Petition Raised The Possibility Of A Valid Claim

Mr. Caudill asserts that the district court abused its discretion by denying his motion to appoint counsel where he raised the possibility of a valid claim, which was all he was required to do in order to have counsel appointed to assist him with his post-conviction proceeding.

In *Swader v. State*, 143 Idaho 651 (2007), the Idaho Supreme Court addressed the standard for appointment of counsel in post-conviction cases, reaffirming the *Charboneau* standard:

In deciding whether the *pro se* petition raises the possibility of a valid claim, the trial court should consider whether the facts alleged are such that a reasonable person with adequate means would be willing to retain counsel to conduct a further investigation into the claims. Although "the petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims," the court should appoint counsel if the facts alleged raise the possibility of a valid claim.

Swader, 143 Idaho at 654 (internal citation omitted). The *Swader* Court also made it clear that this standard is much lower than the standard for deciding petitions for post-conviction relief on their merits because, as had also been recognized in *Charboneau*, *pro se* petitioners generally cannot investigate or properly present their claims (regardless of whether those claims will ultimately be successful) without the assistance of counsel. *Id.* at 654-655. The *Swader* Court concluded:

Therefore, the trial court should appoint counsel if the petition alleges facts showing the possibility of a valid claim such that a reasonable person with

adequate means would be willing to retain counsel to conduct a further investigation into the claim. The investigation by counsel may not produce evidence sufficient to survive a motion to dismiss. But, 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.

In *Charboneau*, the Supreme Court held that a post-conviction petitioner is entitled to the appointment of counsel “unless the trial court determines that the post-conviction proceeding is frivolous.” *Charboneau*, 140 Idaho at 792 (quoting *Brown v. State*, 135 Idaho 676, 679 (2001)). In determining whether counsel should be appointed, “every inference must run in the petitioner's favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts.” *Charboneau*, 140 Idaho at 794. The proceeding is not frivolous and, thus, counsel must be appointed, if the petitioner “alleges facts to raise the *possibility* of a valid claim” *Id.* at 793 (emphasis added).

The *Charboneau* Court recognized that *pro se* petitioners “cannot be expected to know how to properly allege the necessary facts,” and thus should be given a meaningful opportunity to correct any defects in their petition—with the assistance of counsel—prior to any dismissal decision. *Id.* While *Charboneau* does not require that counsel be appointed in every post-conviction case, it does stand for the proposition that “[a]t a minimum, the trial court must carefully consider the request for counsel, before reaching a decision on the substantive merits of the petition” *Id.* at 794.

The district court erred by refusing to appoint counsel to assist Mr. Caudill to ensure all of the *prima facie* elements of the post-conviction claim were clearly spelled out, as “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” See *Vavold v. State*, 148 Idaho 44, 45 (2009). As the Court said in *Charboneau*, “It is

unlikely that [the petitioner] could properly raise such a claim and determine how to procure admissible evidence establishing all the elements of such a claim without the assistance of counsel.” *Charboneau*, 140 Idaho at 793. Because Mr. Caudill could not “be expected to know how to properly allege the necessary facts,” and would have greatly benefited from the assistance of counsel, the district court should have at least “carefully consider[ed]” his motion for appointment of counsel before dismissing his petition on its merits. *See Charboneau v. State*, 140 Idaho 789, 793-94 (2004) (vacating the dismissal of petitioner’s Petition so that if, on remand, the district court decides to appoint counsel, that counsel may file an amended petition or affidavits alleging facts sufficient to avoid summary dismissal). When applying the standard for court-appointed counsel to pro se applications for appointment of counsel, the trial court should keep in mind that petitions and affidavits filed by a pro se petitioner will often be conclusory and incomplete: “Although facts sufficient to state a claim may not be alleged because they do not exist, they also may not be alleged because the *pro se* petitioner simply does not know what are the essential elements of a claim.” *Charboneau*, 140 Idaho at 792 (quoting *Brown v. State*, 135 Idaho 676, 679 (2001)).

In the present case, Mr. Caudill contends that he has, at the very least, raised the possibility of a valid claim.

In denying Mr. Caudill’s motion for counsel, the district court wrote:

Furthermore, appointment of counsel is only appropriate where the petitioner alleges facts to support a valid claim for relief. *Shackelford v. State*, 160 Idaho 317, 372 P.3d 372, 380 (2016). As discussed below, in the Court’s opinion Caudill’s claims do not state a valid claim for relief. Therefore, the Court denies his request for appointment of counsel at this time.

(R., p.16.) However, the district court applied the wrong legal standard. In *Shackelford*, the Idaho Supreme Court held:

The standard for determining whether to appoint counsel for an indigent petitioner in a post-conviction proceeding is whether the petition alleges facts *showing the possibility of a valid claim.*” *Murphy v. State*, 156 Idaho 389, 327 P.3d 365 (2014) (citing *Workman v. State*, 144 Idaho 518, 529, 164 P.3d 798, 809 (2007)). “In determining whether the appointment of counsel would be appropriate, every inference must run in the petitioner's favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts.” *Melton v. State*, 148 Idaho 339, 342, 223 P.3d 281, 284 (2009) (quotation marks omitted).

Id. 160 Idaho at 325 (emphasis added). The district court did not act consistently with the applicable legal standards where it placed a greater burden on Mr. Caudill, requiring him to “state a valid claim for relief”, rather than the correct standard whereby he was only required to “allege facts showing the possibility of a valid claim.” The district court abused its discretion in denying his motion for appointment of counsel where it failed to act consistently with the legal standards applicable to the specific choices available to it, and it failed to reach its decision by the exercise of reason. *See Lunneborg*, 163 Idaho at 863.

There is no evidence in the record that controverts Mr. Caudill’s claim that his counsel’s performance was deficient for failing to file a motion to suppress. Although the facts alleged do not fully flesh out a suppression issue, they do at least raise that possibility of a valid claim—a possibility which is supported by other facts in the record. Mr. Caudill has raised the *possibility* of a valid claim by offering evidence that his counsel should have filed a motion to suppress evidence obtained from the stop of his vehicle.

CONCLUSION

Mr. Caudill respectfully requests that this Court vacate the summary dismissal of his post-conviction petition with respect to the issue of whether post-conviction counsel should have been appointed, and whether trial counsel was ineffective for failing to file a motion to suppress evidence, and remand the case to the district court for an evidentiary hearing with appointed counsel.

DATED this 23rd day of April, 2019.

/s/ Sally J. Colley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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E-Service: ecf@ag.idaho.gov

/s/ Teal M. Vosburgh
TEAL M. VOSBURGH
Administrative Assistant

SJC/tmv