

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

VESTAL DEAN CAUDILL, )  
 ) No. 46427-2018  
 Petitioner-Appellant, )  
 ) Bonneville County Case No.  
 v. ) CV-2018-1699  
 )  
 STATE OF IDAHO, )  
 )  
 )  
 Defendant-Respondent. )  
 \_\_\_\_\_ )

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

**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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## STATEMENT OF THE CASE

### Nature Of The Case

Vestal Dean Caudill appeals from the summary dismissal of his petition for post-conviction relief and the denial of his motion for appointment of counsel. On appeal Caudill argues the district court abused its discretion when it denied his request for appointment of post-conviction counsel.

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

Caudill pled guilty to one count of possession of methamphetamine. (R., p. 4.) The district court sentenced Caudill to six years with one year fixed. (R., p. 13.) Caudill appealed the denial of his Idaho Criminal Rule 35 motion for leniency. See State v. Caudill, No. 45445, Unpublished Opinion No. 441 (Ct. App. May 4, 2018). The Court of Appeals affirmed the district court. Id.

Caudill filed a pro se Petition and Affidavit for Post Conviction Relief. (R., pp. 4-8.) Caudill's Petition and Affidavit referenced the traffic stop and disputed some of the facts related to the traffic stop. (See R., pp. 5, 8.) When explaining how he believed his counsel failed to adequately represent him, Caudill again appeared to reference the traffic stop:

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

- (a) Not a routine stop
- (b) Not loaded with Hay
- (c) Permission to search truck was denied

(R., p. 6. (emphasis original) (verbatim).) Caudill also filed a Motion and Affidavit in Support For Appointment of Counsel. (R., pp. 9-12.)

The district court filed a Notice to Intent to Dismiss Petition on March 27, 2018. (R., pp. 13-20.) As part of the Notice, the District Court denied Caudill's request for appointment of post-conviction counsel because Caudill failed to articulate a valid claim for relief. (R., p. 16.) Caudill failed to state a valid claim, in part, because there was "nothing in the Petition which alleges or suggests that defense counsel's conduct fell below the applicable standard of care." (R., p. 17.) Caudill did not produce any evidence of any communications between himself and his attorney, let alone explain how any legal advice was deficient. (R., p. 18.) "Caudill has not provided evidence supporting any claim that counsel coerced his plea of guilt or was otherwise ineffective in his representation." (R., p. 19.)

The Notice of Intent to Dismiss instructed Caudill that he had 30 days to respond, and if he did not respond the court could dismiss his petition. (R., p. 19.) Caudill did not respond. (R., pp. 21-22.) The district court dismissed Caudill's petition. (R., pp. 21-24.) Caudill timely appealed. (R., pp. 25-29.)

## ISSUE

Caudill states the issue on appeal as:

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

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Caudill failed to show the district court abused its discretion when it denied his request for appointment of post-conviction counsel because Caudill failed to articulate any facts or allegations to support a possibly valid claim for ineffective assistance of counsel?

## ARGUMENT

### The District Court Did Not Abuse Its Discretion Because Caudill Failed To Allege A Possibly Valid Claim That His Trial Counsel Was Ineffective

#### A. Introduction

Caudill’s Petition and Affidavit did not make any reference to communication or performance by his trial counsel, let alone any claim that this communication or performance was ineffective. (See R., pp. 5-6, 8.) The district court applied the correct standard and did not abuse its discretion when it denied Caudill’s request for appointment of post-conviction counsel.

#### B. Standard Of Review

The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court.” Green v. State, 160 Idaho 657, 658, 377 P.3d 1120, 1121 (Ct. App. 2016). “Although the appointment of counsel is discretionary, counsel ‘should’ be appointed when there is the possibility of a valid claim; failure to do so is an abuse of discretion.” Andrus v. State, 164 Idaho 565, \_\_\_, 433 P.3d 665, 669 (Ct. App. 2019).

#### C. The District Court Did Not Abuse Its Discretion When It Denied Caudill’s Request For Appointment Of Post-Conviction Counsel Because Caudill Failed To Allege The Possibility Of A Valid Claim

Caudill argues the district court applied an incorrect standard, and therefore abused its discretion, when it denied his request for appointment of post-conviction counsel. (See Appellant’s brief, pp. 6-9.) Caudill argues that the district court “did not act consistently with 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.’” (Appellant’s brief, p. 9.) Caudill’s argument fails because it ignores the district court’s discussion of what Caudill actually alleged. The district court applied the correct standard because it examined Caudill’s claim and found that there was nothing in the Petition that even alleged that trial counsel’s conduct was somehow inadequate. (See R., pp. 16-20.)

“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.” Shackelford v. State, 160 Idaho 317, 325, 372 P.3d 372, 380 (2016) (quoting Murphy v. State, 156 Idaho 389, 393, 327 P.3d 365, 369 (2014)); see also Swader v. State, 143 Idaho 651, 653, 152 P.3d 12, 14 (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.” Id. (quoting Melton v. State, 148 Idaho 339, 223 P.3d 281, 284 (2009)). “The petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims; however, he should be provided with a meaningful opportunity to supplement the record and to renew his request for court-appointed counsel prior to the dismissal of his petition where he has alleged facts supporting some elements of a valid claim.” Nelson v. State, 157 Idaho 847, 854, 340 P.3d 1163, 1170 (Ct. App. 2014).



Here, the district court, based upon its analysis of Caudill's claims, denied his request for appointment of counsel. (R., pp. 16-19.) As part of this denial the district court incorporated its broader discussion of Caudill's claim. (See id.)

A. Request for Appointment of Counsel

Caudill requests appointment of counsel to assist him throughout the post-conviction proceedings. Applicants for post-conviction relief have no constitutional right to representation of counsel. *Rios-Lopez v. State*, 144 Idaho 340, 343, 160 P.3d 1275, 1278 (App. Ct. 2007). Furthermore, appointment of counsel is only appropriate where the petition 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 (emphasis added).) While the above cited section refers to a "valid claim for relief" the district court's discussion of Caudill's claim, makes it clear that the district court found no potentially viable ineffective assistance of counsel claim because Caudill failed to even allege his trial counsel did anything wrong.

Even had the district court applied an incorrect legal standard when it denied Caudill's motion for court-appointed counsel, such error would still not require reversal. Where the district court applies an incorrect legal standard when denying a motion for court-appointed counsel, the appellate court will simply review the petition and determine, under the correct legal standard, whether or not the appointment of counsel is appropriate. See Swader, 143 Idaho at 653, 152 P.3d at 14 (the question when a district court fails to apply the correct legal standard governing requests for appointment of counsel is whether, applying the correct legal standard, the motion for appointment of counsel would have been granted); accord Melton v. State, 148 Idaho 339, 343, 223 P.3d

281, 285 (2009); Judd v. State, 148 Idaho 22, 25, 218 P.3d 1, 4 (Ct. App. 2009).

Applying the correct legal standards, Caudill's petition failed to raise the possibility of a valid ineffective assistance of counsel claim.

A post-conviction petitioner alleging ineffective assistance of counsel must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). Here, Caudill did not allege either deficient performance or resulting prejudice. Caudill alleged:

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

- (a) Trooper asked to look in truck for additional people was granted, when asked to search truck was denied.
- (b) Truck was Blue and Black and not hauling Hay.
- (c) Trooper stated routine traffic stop for Blinker. But was also stated that they were looking for it for Amber Alert.
- (d) Trooper stated the passenger door was opened to get registration Etc.. and left open, why would passenger door be opened registration was on drivers side
- (e) They were trying to follow truck from Twin Falls if routine stop would have been made well before Arco.
- (f) 2 officers conflicting reports of truck discription (sic) and reason for pull over

(R., pp. 5, 8 (verbatim).)

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

- (a) Not a routine stop
- (b) Not loaded with Hay
- (c) Permission to search truck was denied

(R., p. 6. (emphasis original) (verbatim).) As the district court found, Caudill failed to present any evidence or allegations regarding communications or advice from his attorney, let alone any evidence or claim that his attorney actually did anything wrong. (See R., pp. 17-19.) “Caudill has introduced no evidence of the content of the communications between himself and his counsel regarding this evidence.” (R. p. 18.) There is no possibility of a valid ineffective assistance of counsel claim if there is no allegation regarding what trial counsel did or did not do or say.

Further, nothing in Caudill’s allegations could form the possibility of a valid ineffective assistance of counsel claim, because none of the allegations alleged either deficient performance or resulting prejudice. The district court found, “Liberally construing the Petition, Caudill may be claim[ing] that his attorney was ineffective in not challenging the evidence obtained from the traffic stop. There is however nothing in the Petition which alleges or suggests that defense counsel’s conduct fell below the applicable standard of care.” (R., p. 17.) The district court did not abuse its discretion when it denied Caudill’s request for appointment of post-conviction counsel.

#### CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 16th day of July, 2019.

/s/ Ted S. Tollefson  
TED S. TOLLEFSON  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of July, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Ted S. Tollefson  
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TST/dd