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Idaho Supreme Court
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# IN THE SUPREME COURT OF THE STATE OF IDAHO

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|---|---|---|
| **MELVIN DEAN HANKS,** | ) | |
| | ) | **No. 46435-2018** |
| **Petitioner-Appellant,** | ) | |
| | ) | **Minidoka County Case No.** |
| **v.** | ) | **CV-2016-932** |
| | ) | |
| **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 MINIDOKA

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**District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Melvin Dean Hanks appeals from the district court's judgment dismissing with prejudice his petition for post-conviction relief. Hanks argues that the district court erred by dismissing his petition without an evidentiary hearing.

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

In 1984, Melvin Dean Hanks was sentenced to "the determinate term of life, pursuant to Idaho Code § 19-2513A, for the crime of kidnapping in the first degree." (R., pp.22-23 (capitalization altered).) Hanks did not appeal from the imposition of that sentence. (R., p.12.)

In 1985, Hanks filed a motion to reduce his sentence. (R., p.48.) "He argued that the fixed life sentence is legally interpreted as a thirty year sentence . . . ." (R., p.51.) The district court rejected his argument: "the consideration of the fixed life sentence as the equivalent of a thirty year sentence[] is not supported in the record." (R., pp.51-52.)

In 1988, Hanks filed a petition for post-conviction relief. See Hanks v. State, 121 Idaho 153, 153, 823 P.2d 187, 187 (Ct. App. 1992). The district court dismissed the petition that same year. Id.

In 1990, Hanks filed a successive petition for post-conviction relief. (R., pp.328-33.) He argued that his determinate life sentence constituted cruel and unusual punishment under the Eighth Amendment. (R., pp.330-31.) In his sworn petition, Hanks stated that "[t]he duration of a sentence of a determinate life term is the full natural life of the inmate." (R., pp.331-32.) The district court dismissed Hanks's petition as untimely. (R., p.372.)

In 2016, Hanks filed another petition for post-conviction relief. (R., pp.11-14.) He claimed that his sentence for "determinate life" actually meant thirty years and thus, in his view, his sentence had expired. (R., p.12.) The state moved for summary disposition on the basis that the record of the criminal proceeding and subsequent proceedings contradicted Hanks's claim. (R., pp.373-75.) The state relied on Hanks's prior post-conviction petition in which he admitted, in a sworn statement, that his determinate life sentence meant the full term of his natural life. (R., pp.373-75.) The state also argued that the doctrine of judicial estoppel barred Hanks's claim. (7/30/2018 Tr., p.5, Ls.19-21.)

Hanks responded to the state's motion by presenting an affidavit from Hanks's sister. (R., pp.384-85.) Hanks's sister stated in her affidavit that she attended sentencing and, while "[s]he does not remember the exact words spoken by the Judge, [she] remembers the Judge saying that there would be a day that Melvin Hanks would get out of prison." (R., p.384.) Hanks argued that his sister's affidavit created a genuine issue of material fact as to whether Hanks was sentenced to spend his full natural life in prison or just thirty years in prison. (R., pp.379-82.)

Although the district court found "all the elements of judicial estoppel" were not satisfied (R., p.393), the district court dismissed Hank's petition for post-conviction relief with prejudice (R., pp.390-98). The district court found "[t]here simply is no legal basis to claim that 'determinate life' really meant '30 years' when the petitioner was sentenced." (R., p.392.) And the district court found, as a factual matter, that "the Court record is clear that the sentence was fixed life" because "[e]very court document indicates the sentence was determinate life." (R., p.394.)

Hanks timely appealed. (R., pp.400-03.)

## ISSUES

Hanks states the issue on appeal as:

> Did the district court error [sic] in summarily dismissing Mr. Hanks' petition for post-conviction relief because there is an issue of material fact as to whether his sentence as orally pronounced has expired?

(Appellant's brief, p.5.)

The state rephrases the issues as:

I. Has Hanks failed to show that the district court erred when it dismissed with prejudice his petition for post-conviction relief?

II. Did the district court abuse its discretion when it refused to invoke the doctrine of judicial estoppel?

## ARGUMENT

### I.
### The District Court Properly Dismissed Hanks's Petition For Post-Conviction Relief

### A. Introduction

The district court properly dismissed Hanks's petition for post-conviction relief on the basis that the record clearly disproved Hanks's claim. Hanks claimed that his sentence had expired because he received only a thirty-year sentence for first-degree kidnapping. But, as the district court found, "[e]very court document indicates the sentence was determinate life." (R., p.394.)

Hanks tried to create a genuine issue of material fact by presenting an affidavit from his sister. Yet the affidavit "has no statement of what the sentence was." (R., pp.395-96.) Hanks's sister admitted in the affidavit that she "does not remember the exact words spoken by the Judge" at sentencing. (R., p.395.) Instead, she relies on her (admittedly flawed) recollection that the judge said "there would be a day that Melvin Hanks would get out of prison." (R., p.395.) That unsubstantiated recollection is contradicted by the written judgment, the same district judge's near-contemporaneous ruling on Hanks's Rule 35 motion, and Hanks's prior petition for post-conviction relief. Because the record clearly disproved Hanks's claim, the district court did not err by dismissing it without an evidentiary hearing.

### 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. Hanks Failed To Create A Genuine Issue Of Material Fact On The Issue Of Whether He Had Been Sentenced To Thirty Years Or Fixed Life

The district court properly dismissed Hanks's petition for post-conviction relief. An "applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based." Charboneau, 144 Idaho at 903, 174 P.3d at 873. "The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included." I.C. § 19-4903.

"Summary disposition of a petition for post-conviction relief is appropriate if the applicant's evidence raises no genuine issue of material fact." Id.; see I.C. § 19-4906(b), (c). "A court is required to accept the petitioner's unrebutted allegations as true, but need not accept the petitioner's conclusions." Charboneau, 144 Idaho at 903, 174 P.3d at 873. The district court may dismiss an application for post-conviction relief without holding an evidentiary hearing where the allegations "are clearly disproved by the record of the original proceeding" or "do not justify relief as a matter of law." Id.

Here, the district court properly dismissed Hanks's petition because the allegation in his petition that he had only been sentenced to thirty years was "clearly disproved by the record." Id. The Judgment of Conviction that Hanks attached to his petition expressly stated that the district court sentenced Hanks to "the determinate term of life, pursuant to Idaho Code § 19-2513A, for the crime of kidnapping in the first degree." (R., pp.45-46 (capitalization altered).) And when Hanks tried to tell the district court—the very same district judge who imposed the sentence—that his "fixed life sentence is legally interpreted

as a thirty year sentence" (R., p.51), the district court found the argument "[was] not supported in the record" (R., p.52). Thus, the record clearly shows not only that the district court actually sentenced Hanks to "the determinate term of life" but that it fully intended to do so. (R., p.52.)

Furthermore, Hanks himself confirmed those facts in a sworn statement. In a prior petition for post-conviction relief, Hanks stated that he had been sentenced to a "[d]eterminate term of life" and explained that "[t]he duration of a sentence of a determinate life term is the full natural life of the inmate." (R., pp.329, 331-32.) And, "being first duly sworn on oath, [Hanks] depose[d] and state[d]" that he knew the "contents" of the petition and "believe[d] the same to be true." (R., p.333.)

In the face of this decisive evidence, Hanks produced an affidavit from his sister that, "while perhaps not merely conclusory, is as unpersuasive as a conclusory affidavit." (R., p.395.[1]) "It says merely that her memory is different from what the documents and

[1] In the district court, Hanks tried to rely on a commitment order and minutes of his arraignment that indicated his fixed life sentence should not exceed thirty years. (R., pp.93 ("Fixed Life Sentence Not To Exceed Thirty (30) years at full term release date."); R., p.128 ("Determinate life not to exceed thirty years.").) But the state presented the district court with certified copies of those documents that showed those statements had been added after the fact. (R., pp.285-89.) The state asserted that Hanks "committed a fraud upon this court by providing falsified documents." (R., p.283.) Hanks conceded that there were "some extraneous annotations typed in" but said he "cannot prove who put those there" and "cannot say with any reliability how truthful or correct they are." (7/30/2018 Tr., p.21, Ls.14-22.) The district court's order dismissing Hanks's petition makes no mention of the documents. (R., pp.390-96.) Regardless of how those statements ended up in Hanks's copies of those documents, on appeal Hanks notes the existence of those documents in the facts section of his brief (Appellant's brief, pp.1-2, 4), but he does not use them to advance his argument (Appellant's brief, pp.5-15). Given Hanks's admission that the documents are not reliable and his decision not to rely on the documents on appeal, this Court should not consider Hanks's version of those documents.

admissions from her brother say, while conceding the (understandable) defects of her memory." (R., p.395.)

Put differently, the affidavit does not support Hanks's claim that his sentence has expired because it does not say *when* Hanks's sentence expires. (R., p.384.) Instead, the affidavit simply states that Hanks's sister "does not remember the exact words spoken by the Judge." (R., p.384.) And her recollection that the district court said "there would be a day that Melvin Hanks would get out of prison" is contradicted by the available court records from the time and Hanks's sworn statement from his prior post-conviction petition. (R., p.384.) Thus, as the district court found, the affidavit does not create a genuine issue of material fact because it "is a bare allegation unsubstantiated by facts" and "is a statement of the affiant's memory more than a statement of what the sentencing judge said." (R., pp.395-96.)

On appeal, Hanks tries to bolster his sister's affidavit by claiming he had the same recollection as his sister. (Appellant's brief, p.11.) But if he had such a recollection, he did not present evidence of it to the district court. His petition and accompanying affidavit do not say anything about Hanks recalling what the district court said at his sentencing. (See R., pp.11-16, 77-82.) Instead, both documents simply argued that *legally* a determinate life sentence was understood to mean thirty years in prison—a separate proposition for which he provides virtually zero support. (See R., pp.11-16.)

Hanks has tried to paint a picture of a tumultuous legal landscape where "prosecutors, defense attorneys and judges . . . believed that a life sentence meant thirty years." (Appellant's brief, p.7.) But he quickly ran out of paint. His only support for his assertion is State v. Wilson, 105 Idaho 669, 672 P.2d 237 (Ct. App. 1983), and Wilson

identified only two or three people who supposedly held that view: "counsel for both Wilson brothers[] and the prosecuting attorney." Wilson, 105 Idaho at 675, 672 P.2d at 243. These two or three individuals apparently fell prey to a false conversion fallacy of sorts: they mistakenly reasoned that all fixed life sentences must be thirty years because the Idaho Supreme Court had said (in the context of parole) that all thirty-year sentences were effectively life sentences. See id.

Furthermore, Wilson makes clear that, by the time Hanks was sentenced, the Idaho Court of Appeals had already rejected that unconventional view and the Idaho Attorney General had already published an opinion rejecting it. See Wilson, 105 Idaho at 675-76, 672 P.2d at 243-44. As Hanks notes, the Idaho Supreme Court issued a decision in Wilson shortly after Hanks was sentenced in this case in which it "reverse[d]" the decision of the Idaho Court of Appeals on other grounds. State v. Wilson, 107 Idaho 506, 508, 690 P.2d 1338, 1340 (1984). Hanks leaves out, however, that the Idaho Supreme Court, like the Idaho Court of Appeals, clearly viewed a determinate life sentence as a sentence for "the duration of one's life." Id. at 509, 690 P.2d at 1341.

More importantly, the record here conclusively shows there was no confusion in *Hanks's* case. The district judge who sentenced Hanks found the view that a determinate life sentence meant thirty years in prison "[was] not supported in the record." (R., p.52.) And there is nothing in the sentencing statute employed by the district court to suggest that a determinate life sentence meant anything other than a sentence for the natural life of the prisoner. See State v. Rawson, 100 Idaho 308, 311, 597 P.2d 31, 34 (1979) (quoting I.C. § 19-2513A).

Hanks asks this Court to ignore the district court's finding because it "was based on a telephone call with a prison administrator rather than its memory of the phrase 'determinate life term.'" (Appellant's brief, p.12.) That is inaccurate. While the district court consulted the prison administrator, it also expressly found that "the consideration of the fixed life sentence as the equivalent of a thirty year sentence[] *is not supported in the record*." (R., p.52 (emphasis added).) And "the record" included the Judgment and Order of Conviction signed by that same district judge. (See R., pp.44-46.)

Citing Ebersole v. State, 91 Idaho 630, 428 P.2d 947 (1967), Hanks claims a due process violation because no transcript or minutes from his original sentencing hearing could be found. (Appellant's brief, p.11.) But the due process violation in Ebersole arose from the district court's failure to *make* any record of the defendant's arraignment. See 91 Idaho at 636, 428 P.2d at 953. Here, however, the only failure, if any, was the failure of the district court to preserve the transcript or minutes for thirty-five years when Hanks did not appeal the sentencing decision in the first place. (R., pp.393-94 ("No transcript is available because the matter was not appealed and it was over 30 years ago.").) Furthermore, unlike in Ebersole where the district court failed to make any record of the proceedings, here the district court memorialized the sentencing proceeding in the written judgment. (R., pp.21-23.) And Hanks indisputably had the written judgment when crafting his post-conviction claim. (R., pp.21-23.)

Finally, Hanks also argues that this Court should resolve the alleged ambiguity in his sentence in his favor to avoid an Eighth Amendment violation for cruel and unusual punishment because "[w]hen interpreting ambiguous statutes, courts must seek an

interpretation that avoids constitutional infirmity." (Appellant's brief, p.12.) This argument suffers from a litany of problems.

First, as explained above, there is nothing ambiguous about Hanks's sentence. The record clearly proves that the district court sentenced Hanks to a determinate life sentence and that both the district court and Hanks understood that to mean the duration of Hanks's natural life. (R., pp.52, 329-31.) Second, this is not a case of statutory interpretation because Hanks has not even argued that any relevant statute is ambiguous. (See Appellant's brief, pp.1-15.) Third, Hanks is about thirty years too late to raise a constitutional challenge to his sentence. See I.C. § 19-4902 (1979) (setting the deadline for a petition for post-conviction relief at five years from the expiration of the time for appeal). In fact, Hanks already asserted this very constitutional challenge to his sentence in a prior post-conviction petition, and the district court dismissed the petition as untimely—twenty-nine years ago. (R., pp.371-72); see Hanks v. State, 121 Idaho 153, 155, 823 P.2d 187, 189 (Ct. App. 1992) ("Hanks was barred from making an application for post-conviction relief more than five years after November 22, 1984."). Fourth, and most problematic for Hanks, a sentence of life without the possibility of parole for first-degree kidnapping does not violate the Eighth Amendment. See 51 C.J.S. Kidnapping § 49 ("In accordance with statutory provisions, life imprisonment without possibility of parole may be imposed on conviction for kidnapping."); see also State v. King, 518 S.E.2d 663, 668-

71 (W. Va. 1999) (holding "sentence[] of life without mercy for kidnapping" did not violate the Eighth Amendment or its counterpart in the West Virginia Constitution).[2]

In sum, the district court properly dismissed Hanks's petition for post-conviction relief on the basis that Hanks's claim that his sentence expired was "clearly disproved by the record." Charboneau, 144 Idaho at 903, 174 P.3d at 873.

## II.
## The District Court Abused Its Discretion By Refusing To Invoke Judicial Estoppel

### A. Introduction

The state also asserted a second theory under which the district court should have dismissed Hanks's petition: judicial estoppel. (R., p.386.) While the district court refused to apply judicial estoppel, this Court can affirm the district court on any theory supported by the record and preserved in the district court. See State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) ("It is true that where an order of the district court is correct but based upon an erroneous legal theory, this Court will affirm upon the correct theory." (internal quotations omitted)). Judicial estoppel was preserved in the district court both because the state presented that theory in the district court (R., p.386; 7/30/2018 Tr., p.5, Ls.19-21), see Garcia-Rodriguez, 162 Idaho at 275, 396 P.3d at 704, and because the district court addressed the issue (R., p.393), see State v. Jeske, 164 Idaho 862, 868, 436 P.3d 683, 689 (2019). The district court should have invoked judicial estoppel because Hanks took a position in this petition that was incompatible with a position he took in a prior petition.

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[2] The United States Supreme Court has held that sentencing a *juvenile* who has not committed homicide to life without the possibility of parole violates the Eighth Amendment, see Graham v. Florida, 560 U.S. 48, 82 (2010), but the district court imposed Hanks's sentence when Hanks was forty-one years old (R., pp.11, 56).

B. Standard Of Review

This Court reviews a district court's decision on whether to invoke judicial estoppel for an abuse of discretion. See Watkins v. Watkins, 162 Idaho 600, 608, 402 P.3d 1053, 1061 (2017).

C. The District Court Should Have Invoked Judicial Estoppel Because Hanks Took A Position In This Petition Incompatible With A Position He Took In The Past

The district court should have invoked the doctrine of judicial estoppel. "Judicial estoppel precludes a party from advantageously taking one position, then subsequently seeking a second position that is incompatible with the first." Hoagland v. Ada Cnty., 154 Idaho 900, 912, 303 P.3d 587, 599 (2013). "The policy behind judicial estoppel is to protect the integrity of the judicial system, by protecting the orderly administration of justice and having regard for the dignity of the judicial proceeding." Id. (internal quotations omitted). In short, "[i]t is intended to prevent the parties from playing fast and loose with the legal system." Id.

This case presents a textbook example of a party "playing fast and loose with the legal system." Hoagland, 154 Idaho at 912, 303 P.3d at 599. In a prior post-conviction petition, Hanks took the position that he had been sentenced to stay in prison for his "full natural life." (R., pp.331-32.) And that position went to the heart of his prior claim: he claimed that the *length* of his sentence violated the Eighth Amendment. (R., pp.328-33.) That claim undoubtedly packed a more persuasive punch because Hanks took the position that the length of his sentence was his "full natural life" rather than the position that he had only been sentenced to spend thirty years in prison. See, e.g., State v. Matteson, 123 Idaho 622, 626-27, 851 P.2d 336, 340-41 (1993) (explaining that an Eighth Amendment

challenge to the length of a sentence requires the court to compare the length of the sentence to the nature of the crime).

Now, in conjunction with this petition for post-conviction relief, Hanks has taken a "second position that is incompatible with the first." Hoagland, 154 Idaho at 912, 303 P.3d at 599. While Hanks's prior claim centered on his position that he *was* sentenced to his "full natural life" (R., p.331-32), his current claim hinges on his position that he was *not* sentenced to his "full natural life" (see, e.g., R., pp.11-14). Those two positions are—by definition—incompatible.

Despite Hanks's about-face on the length of his sentence, the district court refused to invoke the doctrine of judicial estoppel because Hanks's "prior statements under oath [did] not appear to comprise all the elements of judicial estoppel." (R., p.393.) That was an abuse of the district court's discretion.

The only requirements that must be satisfied before a court invokes the doctrine of judicial estoppel are (1) the party must "advantageously tak[e] one position" and (2) the party must "subsequently seek[] a second position that is incompatible with the first." Hoagland, 154 Idaho at 912, 303 P.3d at 599. As explained above, those requirements (or "elements") were clearly satisfied in this case. The district court either abused its discretion because it mistakenly believed there were additional "elements of judicial estoppel" that had to be satisfied (R., p.393) and thus did not act "consistently with the legal standards," Watkins, 162 Idaho at 608, 402 P.3d at 1061, or because it mistakenly believed those two elements had not been satisfied and thus failed to reach its decision on judicial estoppel "by an exercise of reason." Watkins, 162 Idaho at 608, 402 P.3d at 1061.

Hanks argues that his prior petition for post-conviction relief is not incompatible with his current petition for post-conviction relief because his prior petition "merely acknowledged the obvious—that the district court's Rule 35 order and the IDOC treated his sentence as one where he was not eligible for parole." (Appellant's brief, p.10.) That ignores the plain language of Hanks's sworn petition and affidavit. Hanks's sworn affidavit stated, without mentioning anyone else's interpretation of his sentence, that he received a "[d]eterminate term of life" and defined "a determinate life term" as "the full natural life of the inmate." (R., pp.329-32.) And Hanks's affidavit stated: "with a determinate life sentence . . . I will *never* be eligible for consideration from the parole and probation board for parole." (R., p.336 (emphasis added).) Because Hanks took a position in this petition that was incompatible with a position he took in a prior petition in order to gain a legal advantage, the district court abused its discretion when it refused to invoke judicial estoppel to bar Hanks's post-conviction claim. See Hoagland, 154 Idaho at 912, 303 P.3d at 599.

## CONCLUSION

The state respectfully requests this Court affirm the district court's judgment dismissing with prejudice Hanks's petition for post-conviction relief.

DATED this 2nd day of August, 2019.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of August, 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/ Jeff Nye
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JN/dd