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

SAMUEL CARL NEYHART, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent.	)	Supreme Court No. 46446-2018 Twin Falls CV42-2017-3262

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE
FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

HONORABLE RONALD WILPER AND HONORABLE THOMAS J. RYAN
District Judges

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TABLE OF CONTENTS

I. Table of Authorities ii

II. Argument in Reply 1

A. The Dismissal of the Adequately Pleaded Claims in the Amended Petition May be Challenged on Appeal 1

B. The Respondent May Not Raise the "Right-Result, Wrong-Theory" Defense on Appeal 2

III. Conclusion 3

I. TABLE OF AUTHORITIES

STATE CASES

Garza v. State, 139 Idaho 533 (2003) 1, 2, 3

State v. Garcia-Rodriguez, 162 Idaho 271 (2017) 3

State v. Grube, 126 Idaho 377 (1994) 1

State v. Hoskins, --- Idaho ---, 443 P.3d 231 (2019) 3

State v. Huntsman, 146 Idaho 580 (Ct. App. 2008) 1

Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889 (2011) 1

STATE STATUTES

Idaho Code § 19-4906(b) 1

II. ARGUMENT IN REPLY

A. *The Dismissal of the Adequately Pleaded Claims in the Amended Petition May be Challenged on Appeal.*

The state claims that Mr. Neyhart may not challenge the summary dismissal of his properly pleaded causes of action on appeal because he did not contest the dismissal below. However, that argument has already been rejected by the Supreme Court:

> A dismissal under I.C. § 19-4906(b), whether the petitioner responds to a notice of intent to dismiss or not, is a determination on the merits of the claims and is subject to appellate review. The loss to a petitioner who does not respond to the 20-day notice of intent to dismiss is that he or she loses the opportunity to cure a defect in an application before the district court which might have resulted in a favorable ruling from the district court or presented an adequate record for a valid appeal. The failure to respond does not foreclose appealing the dismissal.

Garza v. State, 139 Idaho 533, 537 (2003) *overruled on other grounds, Verska v. St. Alphonsus Med. Ctr.,* 151 Idaho 889 (2011).

The cases relied upon by the state are not apposite. In both, the appellant sought review of his own motion which "was never argued to or decided by the court." *State v. Huntsman*, 146 Idaho 580, 585 (Ct. App. 2008) (motion to dismiss for alleged speedy trial violation not ruled upon by court). *See also*, *State v. Grube*, 126 Idaho 377, 387 (1994) (appellant's objections to PSI not ruled upon by district court and thus could not be raised on appeal). Here, the motion for summary disposition was filed by the Respondent, not Mr. Neyhart. The state cites to no

authority to support its assertion that Mr. Neyhart is under an obligation to obtain an explicit ruling on the other party's motion.[1]

Per *Garza*, Mr. Neyhart presented his claims to the district court when he pleaded them in his Amended Petition for Post-Conviction Relief. R 371-379. It was up to the Respondent to prosecute its Motion for Summary Dismissal of the Amended Petition. R 435. When the court issued its "Order Denying State's Motion for Summary Dismissal And Granting Evidentiary Hearing," R 441, it was not Mr. Neyhart's duty to clarify the ruling denying the state's motion in order to retain his right to appellate review. *Garza*, *supra*.

B. *The Respondent May Not Raise the "Right-Result, Wrong-Theory" Defense on Appeal.*

The Respondent first notes that it "relies in part upon, and incorporates as if fully set forth herein, the district court's determination" on the I.R.E. 411 issue. Respondent's Brief, pg. 10. Mr. Neyhart need not respond to that because he has already set forth the reasons why the district court erred in his Opening Brief.

The Respondent then makes additional arguments which it did not present below. *Compare* Respondent's Brief, pg. 10, pgs. 13-19 with Transcript of Evidentiary Hearing pg. 113-117 (Respondent's closing argument) and R 405-407 (Respondent's Brief in Support of Motion for Summary Dismissal). However, the

[1] The Respondent also suggests that Mr. Neyhart should have "attempt[ed] to correct counsel or otherwise assert that he wanted to pursue any other claims." Respondent's Brief, pg. 8, ft. 2. It cites no authority in support of this suggestion. Further, Mr. Neyhart was not able to correct his counsel because he appeared telephonically at the hearing and thus was not able to conduct a private conversation with his counsel.

state may not raise these issues for the first time on appeal. "Issues not raised below will not be considered by this [C]ourt on appeal, and the parties will be held to the theory upon which the case was presented to the lower court." *State v. Hoskins*, --- Idaho ---, 443 P.3d 231, 235 (2019), *quoting State v. Garcia-Rodriguez*, 162 Idaho 271, 275 (2017) (citations omitted). In those cases, the state attempted to raise a new argument on appeal in order to justify a warrantless search. In neither case was the state allowed to do so. It is similarly barred here. "[I]n order for this Court to affirm on the basis of the right-result, wrong-theory rule, the State's [argument on appeal] must have been properly preserved." *State v. Hoskins*, 443 P.3d at 240. Here the state's additional arguments were not preserved because they were not properly presented to the district court. Thus, they may not now serve as a basis to affirm.

III. CONCLUSION

The issues regarding the properly pleaded claims which were summarily dismissed were preserved for appeal under *Garza*. The Respondent, however, may not raise the "right-result, wrong-reasoning" defense for the first time on appeal under *Hoskins*.

Respectfully submitted this 17th day of September, 2019.

/s/ Dennis Benjamin
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Attorney for Samuel Neyhart

CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

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Dated and certified this 17th day of September, 2019.

/s/Dennis Benjamin
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