

IN THE SUPREME COURT OF THE STATE OF IDAHO

MITCHELL JAMES PONTING,)
) No. 46460-2018
 Petitioner-Appellant,)
) Ada County Case No.
 v.) CV01-2017-17063
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Mitchell James Ponting appeals from the district court's judgment dismissing his petition for post-conviction relief. Ponting argues that the district court erred by not providing him adequate notice as to the basis for dismissing two of his post-conviction claims.

Statement Of The Facts And Course Of The Proceedings

The state charged Mitchell James Ponting with two counts of possession of a controlled substance and one count of possession of drug paraphernalia. (R., p.44.) He entered a plea agreement with the state. (R., p.44.) He pled guilty to one count of possession of a controlled substance, and the state dismissed the other two charges. (R., p.44.) The district court sentenced Ponting to a unified sentence of four years in prison with one year fixed. (R., p.45.)

Ponting filed a petition for post-conviction relief and subsequently amended his petition. (R., pp.5-9, 56-60.) As described in his amended petition, Ponting claimed that his counsel provided ineffective assistance by (1) refusing Ponting's request to have a syringe found in Ponting's car tested for fingerprints and DNA and (2) refusing Ponting's request to have a "syringe bag" found in Ponting's car tested for fingerprints.¹ (R., pp.57-58.)

The state filed a motion for summary disposition. (R., pp.63-64.) In its brief in support, the state observed that Ponting had to show deficient performance and prejudice to prevail on a claim of ineffective assistance of counsel. (R., p.83.) The state argued that Ponting failed to show prejudice because he failed to show "that he would not have pled guilty if the syringe or bag were tested." (R., p.88.) Specifically, the state argued that Ponting knew that the state "had no evidence

¹ Ponting made other claims but has not pressed those claims on appeal. (R., pp.56-59; Appellant's brief, pp.4-9.)

his fingerprints or D.N.A. were present on the syringe or bag *before* he pled guilty” and, therefore, “[t]est results could not have played any role in Ponting’s decision to plead guilty.” (R., p.88 (emphasis in original).)

The district court granted the state’s motion for summary disposition as to the relevant claims. (R., p.128.) The court noted that, incident to entering his guilty plea, Ponting had “admit[ed] the truth of the charge as alleged in the Information” and admitted that he knew the heroin was in his car. (R., p.128.) Because those admissions were sufficient to prove possession of a controlled substance, the district court found “whether [Ponting’s] fingerprints or DNA were on the bag or syringe is immaterial.” (R., p.128.) The district court thus concluded that Ponting “ha[d] failed to show he would not have [pled] guilty had trial counsel tested the evidence and, therefore, ha[d] failed to show prejudice.” (R., p.128; Aug., p.1.²)

Ponting timely appealed from the judgment. (R., pp.159-61; Aug., p.1.)

² Ponting augmented the record with a copy of the final judgment. See 6/24/2019 Motion to Augment the Record; 6/25/2019 Order Granting Motion to Augment the Record.

ISSUE

Ponting states the issue on appeal as:

Did the district court err by summarily dismissing two of Mr. Ponting's claims without giving him notice and an opportunity to respond to its reasons for dismissing those claims?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Ponting failed to show the district court erred when it dismissed his petition for post-conviction relief?

ARGUMENT

The District Court Properly Dismissed Ponting's Petition For Post-Conviction Relief

A. Introduction

The state's motion to summarily dismiss Ponting's petition gave Ponting sufficient notice that his petition failed to present sufficient evidence of prejudice. A motion for summary dismissal gives the petitioner sufficient notice when it states the grounds for dismissal with reasonable particularity. "Reasonable particularity only requires pointing out that there is a lack of evidence showing prejudice." DeRushe v. State, 146 Idaho 599, 602, 200 P.3d 1148, 1151 (2009). Ponting concedes that "[t]he State argued that Mr. Ponting failed to prove prejudice" in its motion for summary dismissal and that the district court dismissed the relevant claims because Ponting failed to prove prejudice. (Appellant's brief, pp.8-9.) Thus, "additional notice [was] unnecessary." Kelly v. State, 149 Idaho 517, 523, 236 P.3d 1277, 1283 (2010).

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. The District Court Properly Dismissed Ponting's Two Relevant Claims Because The State's Motion Put Ponting On Notice That He Failed To Sufficiently Allege Prejudice

Ponting had sufficient notice that he failed to properly allege prejudice. If a district court seeks to dismiss a petition for post-conviction relief on its own initiative, it must first give the petitioner notice of "its reasons for so doing" and "an opportunity to reply within 20 days to the

proposed dismissal.” I.C. § 19-4906(b). But if the state files a motion for summary dismissal and “the dismissal is based upon the grounds offered by the State, additional notice is unnecessary.” Kelly v. State, 149 Idaho 517, 523, 236 P.3d 1277, 1283 (2010).

To provide sufficient notice, the state’s motion for summary disposition need only “state with particularity the grounds therefor.” DeRushe v. State, 146 Idaho 599, 601, 200 P.3d 1148, 1150 (2009) (quoting I.R.C.P. 7(b)(1)). “The Rule only requires reasonable particularity.” Id. For example, if the state moves to dismiss a claim of ineffective assistance of counsel on the basis that the petitioner failed to allege prejudice, “[r]easonable particularity only requires pointing out that there is a lack of evidence showing prejudice.” Id. at 602, 200 P.3d at 1151. “It does not require explaining what further evidence is necessary, particularly since it may not exist.” Id.

Here, the state’s motion for summary disposition stated the basis for dismissal with reasonable particularity because the state “point[ed] out that there [was] a lack of evidence showing prejudice.” Id. Specifically, the state argued in its brief in support of the motion for summary disposition that Ponting failed to present evidence showing “that he would not have pled guilty if the syringe or bag were tested.” (R., p.88.) Because the state “point[ed] out that there [was] a lack of evidence showing prejudice,” DeRushe, 146 Idaho at 602, 200 P.3d at 1151, the district court could properly dismiss Ponting’s petition on the basis that Ponting failed to present evidence of prejudice without providing any additional notice, see Kelly, 149 Idaho at 523, 236 P.3d at 1283. That is exactly what the district court did: “Based on a review of the record, the Court finds Petitioner has failed to show he would not have [pled] guilty had trial counsel tested the evidence and, therefore, has failed to show prejudice.” (R., p.128.)

Ponting argues that the state’s motion for summary disposition did not provide sufficient notice because “the State argued and the district court found that Mr. Ponting had failed to show

prejudice for different reasons.” (Appellant’s brief, p.8.) But the notice requirement does not care *how* the petitioner failed to show prejudice; its only concern is whether the state “point[ed] out” *that* the petitioner failed to show prejudice. DeRushe, 146 Idaho at 602, 200 P.3d at 1151 (rejecting argument that reasonable particularity requires the state to identify “why an applicant’s evidence or legal theories are considered deficient”). The state asked the district court to dismiss Ponting’s petition on the basis that he did not show prejudice: “Ponting has failed to raise a genuine issue of material fact that he would not have pled guilty if the syringe or bag were tested.” (R., p.88.) And the district court dismissed Ponting’s petition on the basis that he did not show prejudice: “Based on a review of the record, the Court finds Petitioner has failed to show he would not have [pled] guilty had trial counsel tested the evidence and, therefore, has failed to show prejudice.” (R., p.128.) Reasonable particularity required nothing more.

Furthermore, the state’s specific theory as to how Ponting failed to show prejudice, which the state did *not* have to articulate to provide adequate notice, see DeRushe, 146 Idaho at 602, 200 P.3d at 1151, was not substantively different from the district court’s specific theory as to how Ponting failed to show prejudice. The state argued Ponting failed to show prejudice for his counsel’s failure to test the syringe and the bag because the circumstances surrounding Ponting’s guilt would have been the same before and after the tests. (R., p.88.) The district court found Ponting failed to show prejudice because the test results would have been immaterial given the other evidence already proving Ponting’s guilt. (R., p.128.) While the state and the district court used different words, the gist of both explanations was the same: Ponting failed to prove that the test results would have affected his decision to plead guilty because the test results would have been of no substantial consequence given the other “circumstances” or “evidence” that motivated Ponting to plead guilty. (R., pp.88, 128.)

In all events, whether the state’s specific explanation and the district court’s specific explanation were the same is of little moment because the explanations indisputably overlapped. “When a trial court summarily dismisses an application for post-conviction relief based *in part* on the arguments presented by the State, this is sufficient to meet the notice requirement.” Kelly, 149 Idaho at 523, 236 P.3d at 1283 (emphasis in original). Both the state and the district court reasoned that Ponting failed to show prejudice because he failed to show that the results of the testing would have changed Ponting’s decision to plead guilty. (R., pp.88, 128.) At the very least, the significant overlap between the state’s and the district court’s rationales satisfied the notice requirement. See Workman v. State, 144 Idaho 518, 524, 164 P.3d 798, 804 (2007) (finding sufficient notice for summary dismissal where “[t]here is significant overlap between the reasoning in the district court’s decision and the State’s motion to dismiss”).

CONCLUSION

The state respectfully requests this Court affirm the district court’s judgment dismissing Ponting’s petition for post-conviction relief.

DATED this 19th day of August, 2019.

/s/ Kenneth K. Jorgensen
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th 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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JN/dd