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IN THE SUPREME COURT OF THE STATE OF IDAHO

DEREK JON SANDERS,)	
)	NO. 46461-2018
Petitioner-Appellant,)	
v.)	BANNOCK COUNTY
)	NO. CV-2017-2837
STATE OF IDAHO,)	
)	
Respondent.)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

HONORABLE ROBERT C. NAFTZ
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Mr. Sanders appeals from the district court's judgment dismissing with prejudice his petition for post-conviction relief. He argued in his Appellant's Brief that the district court erred in summarily dismissing his petition because he raised a genuine issue as to whether he was deprived of his Sixth Amendment right to be represented by conflict-free counsel. (Appellant's Br., pp.5-9.) The State argues in response that Mr. Sanders "did not present a genuine issue of material fact to support his [conflict of interest] claim." (Respondent's Br., p.4.) Mr. Sanders submits this Reply Brief to respond to the State's legal argument.

Statement of Facts and Course of Proceedings

Mr. Sanders included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-3.)

ISSUE

Did the district court err in summarily dismissing Mr. Sanders' petition for post-conviction relief?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Sanders' Petition For Post-Conviction Relief

Mr. Sanders alleged in his petition for post-conviction relief that he was deprived of his Sixth Amendment right to be represented by conflict-free counsel because his trial counsel, Mr. Fry, worked in the same public defender's office as Mr. Martinez, who represented two people who Mr. Sanders identified as material witnesses in his case, and who were not called at Mr. Sanders' trial. (R., pp.36-48.) He alleged in his Appellant's Brief that the district court erred in summarily dismissing his petition because, construing all disputed facts in his favor, he stated a claim for post-conviction relief. (Appellant's Br., pp.5-9.)

The State asserts in its Respondent's Brief that "[t]he fatal flaw of Sanders' claim is that none of his pleadings establish that the representation of Pia Adamson by either Mr. Martinez or Mr. Fry was 'directly adverse' to Sanders." (Respondent's Br., p.7.) But this is no fatal flaw. Mr. Sanders does not contend that Roman Hamman and Pia Adamson were directly adverse to him; on the contrary, he contends they were important witnesses in his case, and would have supported his version of the events had they been called as witnesses at his trial. (R., pp.42-46.) He alleges his attorney did not call Mr. Hamman or Ms. Adamson at his trial because of an imputed concurrent conflict of interest. That is, Mr. Sanders' attorney did not zealously represent him in this case (by calling all favorable witnesses on Mr. Sanders' behalf) because of a conflict of interest arising from the fact that he worked in the same office as an attorney who was concurrently representing Mr. Hamman and Ms. Adamson in other matters.

Under the Idaho Rules of Professional Conduct, a concurrent conflict of interests exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client" I.R.P.C. 1.7(a)(1), (2). Here, Mr. Sanders

alleged in his petition for post-conviction relief that his lawyer's representation of him was materially limited by Mr. Martinez's responsibilities to his other clients—specifically, Mr. Hamman and Ms. Adamson. He alleged the imputed conflict of interest prejudiced him, as it led to his attorney failing to call Mr. Hamman and Ms. Adamson as witnesses at his trial. The district court rejected this claim because it concluded “there is no *evidence*” that Mr. Fry's representation of Mr. Sanders “was corrupted by conflicting interests or that his counsel actively represented competing interests.” (R., pp.65-66) (quotation marks and citation omitted, emphasis in original). This statement reveals the district court's error.

At the summary dismissal stage, the issue for the district court to consider is whether the petition raises facts which, if found to be true, would entitle the petitioner to relief. *Noel v. State*, 113 Idaho 92, 94 (Ct. App. 1987). Here, the facts alleged by Mr. Sanders, if found to be true, would entitle him to relief. While the district court and the State may believe Mr. Sanders' trial attorney was not laboring under an imputed conflict of interest, whether he was, and whether Mr. Sanders was prejudiced as a result, is a genuine issue of material fact. The fact that, in the district court's view, Mr. Sanders did not have sufficient evidence to support his claim at the summary dismissal stage is irrelevant. The district court should have permitted Mr. Sanders to proceed to an evidentiary hearing, and erred in summarily dismissing his petition for post-conviction relief.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Sanders respectfully requests that this Court: (1) reverse the district court's order dismissing his petition for post-conviction relief; (2) vacate the final judgment dismissing with prejudice his petition for post-conviction relief; and (3) remand this case to the district court for an evidentiary hearing.

DATED this 11th day of October, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas