

IN THE SUPREME COURT OF THE STATE OF IDAHO

SCOTT C. FREELAND)	
)	No. 46783-2019
Plaintiff-Appellant,)	
)	Twin Falls County case no.
v.)	CV42-18-4416
)	
STATE OF IDAHO,)	
)	
Defendant-Respondent.)	APPELLANT'S REPLY BRIEF
_____)	

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 BENJAMIN J. CLUFF
District Judge**

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Argument

I. Agreement between the parties.

The Respondent conceded, and in fact stipulated, that if Mr. “Freeland was entitled to counsel, the case should be remanded for appointment of counsel and reconsideration of the dismissal.” (Resp. Br., p. 3, fn.1). Mr. Freeland agrees with Respondent on this point, and also stipulates to a remand for appointment of counsel and reconsideration of the dismissal. Mr. Freeland was entitled to counsel, as discussed in detail in his Opening Brief and herein below.

II. Respondent's Brief ignores the low standard Mr. Freeland must meet to qualify for appointment of counsel.

Mr. Freeland discussed at length in his Opening Brief the low threshold he needed to meet in order to have counsel appointed for him to assist him with his post-conviction case. Mr. Freeland need only show the *possibility* of a valid claim initially to trigger the appointment of counsel. While the decision to grant or deny a request for court-appointed counsel is discretionary, counsel should be appointed if the petitioner qualifies financially and “alleges facts to raise the possibility of a valid claim.” *Judd v. State*, 148 Idaho 22, 24, 218 P.3d 1, 3 (Ct. App. 2009)(citing *Charboneau v. State*, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004); *Plant v. State*, 143 Idaho 758, 761, 152 P.3d 629, 632 (Ct. App. 2006)). As noted by both the Idaho Supreme Court and Court of Appeals, and conceded by the Respondent, “[a]lthough 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, 569, 433 P.3d 665, 669 (Ct. App. 2019)(citing *Murphy v. State*, 156 Idaho 389, 392-93, 327 P.3d 365, 368-69 (2014))(emphasis added).

The Respondent did not acknowledge this low standard in its briefing.

Mr. Freeland raised, at a bare minimum, the possibility of a valid claim. He alleged that the statute of limitations should have been tolled, based on his lack of timely access to legal materials. *See, e.g.*, Appellant's Opening Br., pp. 4-9. He provided the Court with a detailed analysis of the equitable tolling issue, including citing cases in support. Mr. Freeland cited the case of *Judd v. State*, wherein the Court's language suggested that equitable tolling may be appropriate in other circumstances where the petitioner is deprived of a reasonable opportunity to present his post-conviction claims. *See, Judd v. State*, 148 Idaho at 25-26, 218 P.3d at 4-5 (Ct. App. 2009)(noting that "[t]o date, Idaho appellate courts have recognized two circumstances where the statute of limitation for a post-conviction action may be equitably tolled," suggesting that additional grounds for equitable tolling exist).

The parties and even the Court may disagree as to the *strength* of Mr. Freeland's equitable tolling claim, but that analysis does not accord with the actual legal standard. Mr. Freeland need only show the existence of the *possibility* of a valid claim in order to meet the minimum threshold for appointment of counsel before taking up the case. *See Andrus*, 164 Idaho at 569, 433 P.3d at 669; *Murphy*, 156 Idaho at 392-93, 327 P.3d at 368-69.

Since Mr. Freeland raised, at a minimum, the possibility of a valid claim, the district court's failure to appoint counsel was an abuse of discretion. *Andrus, supra; Murphy, supra.* This court should remedy that error and reverse the district court.

Additionally, Mr. Freeland raised the possibility of a valid claim in his Sixth Amendment allegations of ineffective assistance of counsel regarding the litigation of his Fourth Amendment

Certificate of Service

I hereby certify that on September 6th, 2019, I filed the foregoing document utilizing the Court's Odyssey ICourt electronic filing system, which caused a copy to be served on the following party:

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