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IN THE SUPREME COURT OF THE STATE OF IDAHO

NATHAN BENJAMIN BYERLY,)
) No. 46837-2019
 Petitioner-Appellant,)
) Ada County Case No.
 v.) CV01-17-22892
)
 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

Nathan Benjamin Byerly appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

Byerly pled guilty to one count of felony domestic violence and the district court imposed a sentence of ten years with two years determinate, to run concurrent with other sentences in different cases. (R., pp. 72-74, 86-88.) He initiated the instant case by filing a petition for post-conviction relief. (R., pp. 8-13.) The state answered and moved for summary disposition. (R., pp. 16-25.) Byerly made several requests for stays and other proceedings he claimed were necessary for him to present a complete record of his claims. (R., pp. 31-35, 46-47, 121-32.) The district court ordered two transcripts and allowed limited discovery on one of Byerly's claims, but otherwise denied his requests for discovery or compelling production of alleged evidence. (R., pp. 136-47.)

The district court ultimately granted the motion and dismissed the petition. (R., pp. 493-505.) Byerly appealed from the entry of judgment. (R., pp. 507-08, 512-31.)

ISSUES

Byerly asserts he “cannot begin to list [the issues on appeal] until a complete record and transcripts is [sic] properly served” and proffers a partial list of potential issues. (Appellant’s brief, pp. 17-19.)

The state rephrases the issue as:

Has Byerly failed to show error in the district court’s general denial of discovery?

ARGUMENT

Byerly Has Failed To Show Error In The District Court's Order Denying Discovery

A. Introduction

In ruling on Byerly's various discovery and related requests the district court took judicial notice of "certain documents and hearings" in the criminal case and insured they were provided to Byerly. (R., pp. 138-39, 143-44, 146.) It denied discovery from the Idaho Department of Correction, Pardons and Parole, governor, sheriff, city, police department and a prison healthcare provider. (R., pp. 142-45.) It allowed discovery related to Byerly's claim for credit for time served based on his arrest in Utah. (R., p. 145.)

Approximately nine months later, the district court dismissed Byerly's petition. (R., pp. 493-505.) The district court did so on three bases: first, that the issues Byerly asserted should have been raised on direct appeal and were therefore procedurally barred, second, Byerly failed to support his claims with admissible evidence, and third, the record of the underlying criminal case disproved his claims. (R., pp. 498-504.)

On appeal Byerly asserts he "didn't have access to the legal records and documents that had been unreasonably seized by STATE OF IDAHO agents" and thus could not prove his credit for time served claim. (Appellant's brief, pp. 16-17 (capitalization original).) He further claims there are "many issues" he would raise but for what he claims is an incomplete record and transcript. (Appellant's brief, pp. 17-19.) Byerly has failed to show error in the summary dismissal of his post-conviction petition.

B. Standard Of Review

“[W]hen reviewing a district court’s order of summary dismissal in a post-conviction relief proceeding, we apply the same standard as that applied by the district court.” Takhsilov v. State, 161 Idaho 669, 672, 389 P.3d 955, 958 (2016). Summary dismissal is appropriate “if it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Campos v. State, 165 Idaho 90, 438 P.3d 787, 789 (Ct. App. 2019).

C. Byerly Has Failed To Show Error In The District Court’s Rulings

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901 – 4911. A petition for post-conviction relief initiates “an entirely new proceeding, distinct from the criminal action which led to [the] conviction.” State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). The remedy available under the Uniform Post-Conviction Procedure Act “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction.” I.C. § 19-4901(b); accord Rodgers v. State, 129 Idaho 720, 725, 932 P.2d 348, 353 (1997) (“An application for post-conviction relief is not a substitute for an appeal.”). Thus, any “issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings” except upon a “substantial factual showing” by admissible evidence “that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier.” I.C. § 19-4901(b). Here the district

court determined that the claims raised by Byerly were barred because they could have been raised on direct appeal as they “relate solely to prosecutorial misconduct or judicial misconduct and/or error.” (R., p. 498.)

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party’s motion or on the court’s own initiative, if the applicant “has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof.” Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). The court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994). Here the district court determined that Byerly “failed to submit or cite to any admissible evidence in support of his claims.” (R., p. 498.)

Finally, allegations contained in a post-conviction petition are insufficient for granting relief when they are clearly disproved by the record of the original proceeding or do not justify relief as a matter of law. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); Charboneau v. State, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007). The district court also dismissed on this basis. (R., p. 498.)

Byerly does not directly challenge any of the district court’s three stated bases for dismissal. Rather, he asserts that he did not have the opportunity to conduct sufficient discovery or create a record of his claims. (Appellant’s brief, pp. 16-19.) His claim fails on several levels.

First, Byerly has failed to support his argument with any citations to the record or authority. “When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.” State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). It is also well settled that the appellate court will not search the record for errors. State v. Hoisington, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983). Byerly’s appellate argument is unsupported by any citation to the record or legal authority and should therefore not be considered.

Second, if his claim is considered on the merits, Byerly has failed to show error. Discovery during post-conviction relief proceedings is a matter left to the sound discretion of the district court. I.C.R. 39(b); Raudebaugh v. State, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001) (citing Fairchild v. State, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996)). “In order to be granted discovery, a post-conviction applicant must identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his or her application.” State v. LePage, 138 Idaho 803, 810, 69 P.3d 1064, 1071 (Ct. App. 2003) (citing Aeschliman v. State, 132 Idaho 397, 402-403, 973 P.2d 749, 754-755 (Ct. App. 1999)). Byerly had over a year to present evidence to show a material issue of fact. (Compare R., p. 8 (petition filed December 11, 2017), with R., p. 493 (summary dismissal granted February 11, 2019).) Byerly has failed to show the lack of admissible evidence to support his claims is because he was not granted discovery, as opposed to being because there is no such evidence.

Finally, even if Byerly’s argument had merit, it would not show error. “Where a lower court makes a ruling based on two alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested basis.” Rich v.

State, 159 Idaho 553, 555, 364 P.3d 254, 256 (2015) (internal quotations omitted). See also State v. Goodwin, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998). Assuming, for the sake of argument, that Byerly were correct, and he should have been allowed to create a better record, such would affect only the district court's determination that Byerly had failed to present evidence. It would have no effect on the district court's determination that the issues could have been raised on direct appeal and were therefore procedurally barred, and that the claims were disproved by the underlying criminal record. In other words, two of the three grounds for dismissal found by the district court are unchallenged by Byerly's appellate argument.

Byerly has failed to show error. His argument is unsupported by citation to the record or legal authority. He has shown no abuse of discretion. Finally, his argument does not address all the grounds for the district court's ruling.

CONCLUSION

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

DATED this 5th day of December, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 5th day of December, 2019, served a true and correct paper copy of the foregoing BRIEF OF RESPONDENT by placing the copy in the United States mail, postage prepaid, addressed to:

NATHAN BENJAMIN BYERLY
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/s/ Kenneth K. Jorgensen
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KKJ/dd