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IN THE SUPREME COURT OF THE STATE OF IDAHO

JOE FRED RANSOM,)	
)	NO. 46976-2019
Petitioner-Appellant,)	
v.)	BONNER COUNTY NO. CV09-18-1549
)	
STATE OF IDAHO,)	APPELLANT'S
)	REPLY BRIEF
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

HONORABLE BARBARA BUCHANAN
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	2
ARGUMENT	3
The District Court Erred When It Dismissed Mr. Ransom’s Post-Conviction Petition Without Providing Him Notice And Time To Respond To The Reasons For Which It Ultimately Dismissed The Petition.....	3
CONCLUSION.....	7
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

Cases

Adams v. State, 161 Idaho 485 (Ct. App. 2016)3, 4

DeRushé v. State, 146 Idaho 599 (2009).....3

Gibbs v. State, 103 Idaho 758 (Ct. App. 1982).....3

Kelly v. State, 149 Idaho 517 (2010).....4, 5

Roman v. State, 125 644 (Ct. App. 1994).....5

Saykhamchone v. State, 127 Idaho 319 (1995).....3

Thomas v. State, 145 Idaho 765 (Ct. App. 2008).....4

Statutes

I.C. § 19-49063, 5

Rules

Idaho Rule of Civil Procedure 7(b)(1)3

STATEMENT OF THE CASE

Nature of the Case

Joe Ransom appeals from the district court's order summarily dismissing his petition for post-conviction relief. On appeal, Mr. Ransom argues that the district court erred when it summarily dismissed his post-conviction action without providing him prior notice of its reasons for summary dismissal and twenty days to respond.

This Reply Brief is warranted to address the State's claim that the district court's basis for dismissing the petition—that Mr. Ransom failed to support his claims with admissible evidence, was “at least partially based on” the reasons the State sought dismissal of the petition—that Mr. Ransom's claim was a bare and conclusory statement without any type of facts to support it. (R., p.659.) The State is wrong. Mr. Ransom was never notified that his petition could be dismissed based on a finding that the evidence he submitted in support of his petition was *inadmissible*, until the district court actually dismissed his petition on that basis.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Ransom's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err when it dismissed Mr. Ransom's post-conviction petition without providing him notice and time to respond to the reasons for which it ultimately dismissed the petition?

ARGUMENT

The District Court Erred When It Dismissed Mr. Ransom's Post-Conviction Petition Without Providing Him Notice And Time To Respond To The Reasons For Which It Ultimately Dismissed The Petition

Idaho Rule of Civil Procedure 7(b)(1) requires that the grounds of a motion be stated with “particularity.” *See DeRushé v. State*, 146 Idaho 599, 601 (2009) (reiterating the requirement of reasonable particularity in post-conviction cases). The notice requirement under I.C. § 19-4906 is met if a petitioner cannot assert surprise or prejudice. *Id.* Reasonable particularity requires only pointing out the absence of admissible evidence of an essential element. *Id.* at 601-02. Reasonable particularity does not require the State to explain for the petitioner what further evidence is necessary to substantiate the petitioner’s claim. *Id.* at 602. Should the State file a motion for summary disposition, but the court dismiss the petition on grounds different from those asserted in the State’s motion, the dismissal is at the court’s own initiative and it must provide the requisite twenty days notice. *Saykhamchone v. State*, 127 Idaho 319, 322 (1995); *see also Gibbs v. State*, 103 Idaho 758, 760 (Ct. App. 1982).

The State argues:

The district court’s dismissal of Ransom’s claim about the exculpatory witnesses was based, at least partially, on the grounds the state argued. The state argued that the district court should dismiss this claim because it was based on “a bare and conclusory statement without any type of facts to support it” and informed Ransom that, if he truly had an exculpatory witness, he should “have brought that person forward.” (R., p.659.) The district court dismissed this claim on the same basis. (R., pp.713-14.) Specifically, citing *Adams v. State*, 161 Idaho 485, 387 P.3d 153 (Ct. App. 2016), the district court dismissed this claim because Ransom “failed to submit affidavits from any of these four individuals stating what they would or could have testified to.” (R., p.713.)

(Resp. Br. p.8.) The State is wrong. The reasons provided by the State and the reasons for which the district court dismissed the petition are not overlapping or substantially similar. The State sought summary dismissal because Mr. Ransom’s petition failed to raise a genuine issue of

material fact. (R., p.653.) The State also claimed that Mr. Ransom did not present any facts in support of his assertions that his counsel failed to interview and call witnesses with exculpatory testimony. (R., p.659.) The court's dismissal of Mr. Ransom's claims were not "partially" based on the ground argued by the State. (Resp. Br., p.8.) The district court's primary reason for dismissal was because, under *Adams*, the evidence Mr. Ransom put forth in his affidavit was insufficient to establish as fact the anticipated testimony of the four individuals. The district court wrote:

"It is not enough to allege that a witness would have testified to certain events or would have rebutted certain statements made at trial without providing, through affidavit, nonhearsay evidence of the substance of the witness's testimony." *Adams v. State*, 161 Idaho at 499, 387 P.3d at 167 (citing *Thomas v. State*, 145 Idaho 765, 770, 185 P.3d 921, 926 (Ct. App. 2008)).

Mr. Ransom has not provided evidence sufficient to overcome the presumption that trial counsel made a strategic decision not to call Ms. Frost as a witness or to question the other three individuals in the way Mr. Ransom believes she should have. Accordingly, Mr. Ransom has failed to raise a genuine issue of material fact as to whether his trial counsel was ineffective for failing to present exculpatory witness testimony due to inadequate investigation and preparation.

(R., p.714.) Thus, the district court concluded that Mr. Ransom's affidavit regarding the expected testimony was inadmissible to support his petition. The State's claim that the district court's grounds regarding exculpatory witnesses were "based, at least partially, on the grounds the state argued" is wholly inaccurate. (Resp. Br., p.8.)

The State relies on the Idaho Supreme Court's decision in *Kelly v. State*, 149 Idaho 517 (2010) to support its contention:

Indeed, the Idaho Supreme Court has already held, at least implicitly, that giving notice does not require instructing the petitioner how to present the relevant information. *See Kelly*, 149 Idaho at 523, 236 P.3d at 1283 (holding state's argument that the petitioner "ha[d] no evidentiary basis to support his claims" counted as notice for the district court's dismissal on the basis that the petitioner's "affidavits do not contain admissible facts to support his allegations of ineffective assistance of counsel").

(Resp. Br., p.8.) However, the decision in *Kelly* is distinguishable from Mr. Ransom’s case. In *Kelly v. State*, the Idaho Supreme Court held that the notice requirement under I.C. § 19-4906 is met if a district court summarily dismisses a petition for post-conviction relief based *in part* on the State’s arguments. *Kelly*, 149 Idaho at 523. In *Kelly*, the State moved for summary dismissal, arguing the petitioner had “no evidentiary basis to support his claims.” *Id.* While the district court analyzed the petitioner’s claims on separate grounds than those the State asserted in its motion, the court ultimately concluded “Kelly’s petition for post-conviction relief [failed] because his affidavits [did] not contain admissible facts to support his allegations of ineffective assistance of counsel.” *Id.* (quotations omitted). As a result, the Idaho Supreme Court held that “it is clear that the district court’s dismissal of Kelly’s [petition] for post-conviction relief was based at least partially on the grounds that the State argued.” *Id.* Accordingly, the notice requirement under I.C. § 19-4906 was met in *Kelly*.

In *Kelly*, the Court found that both the State and the district court focused on the lack of admissible evidence to support the claims. *Id.* Here, only the district court found that Mr. Ransom’s petition lacked admissible evidence to support his claims. While the State claimed that Mr. Ransom’s contention regarding his exculpatory witness testimony was “a bare and conclusory statement without any type of facts to support it,” the State never responded to Mr. Ransom’s affidavit in which he averred the expected testimony of each witness his counsel failed to call at trial and/or interview. (R., pp.659, 678-83.) As the State pointed out in its summary disposition brief, “The post-conviction petitioner must make factual allegations showing each essential element of the claim, and a showing of admissible evidence must support those factual allegations.” (R., p.656. (citing *Roman v. State*, 125 644, 647 (Ct. App. 1994)).) Thus, there are multiple parts a petitioner must establish—failure to make a factual allegation

showing each essential element of the claim *is not* failure support the factual allegations with admissible evidence.

The State claimed that Mr. Ransom failed to provide facts sufficient to allege a claim, whereas the district court's concerns were with the *admissibility* of the evidence. Unlike *Kelly*, where the State alleged that the petitioner failed to support his claims with admissible evidence, here, the State never alerted Mr. Ransom that the facts he averred were inadmissible—that the problem was with the admissibility of the evidence he proffered in support of his allegations. The State's bases for dismissal were not sufficiently similar or overlapping with the district court's bases for dismissal, thus, Mr. Ransom did not receive notice.

As such, the district court erred because it failed to provide Mr. Ransom notice of the reasons it intended to summarily dismiss the petition as well as the full twenty days to respond, which is required under *Saykhamchone*. In the process, Mr. Ransom lost his opportunity to present admissible evidence in support of his claims and his assertions of prejudice.

Had Mr. Ransom been notified that the court intended to dismiss for the reasons it actually dismissed the petition, and had he been allotted the requisite twenty-day period to respond, Mr. Ransom would likely have provided additional information such as witness affidavits in support of his petition that would have entitled him to a full evidentiary hearing on all of his post-conviction claims. In sum, the district court erred when it failed to provide Mr. Ransom notice of the reasons why it would ultimately dismiss the petition and twenty days to respond to the notice.

CONCLUSION

Mr. Ransom respectfully requests that this Court vacate the district court's order dismissing his petition for post-conviction relief.

DATED this 23rd day of April, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

SJC/eas