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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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

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**BRIEF OF APPELLANT**

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

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**HONORABLE BARBARA BUCHANAN  
District Judge**

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## 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.

### Statement of the Facts and Course of Proceedings

Mr. Ransom was convicted of rape and first degree kidnapping. (R., p.645.) He was sentenced to life, with ten years fixed, on each charge, to be served concurrently. (R., p.647.) Mr. Ransom timely appealed from the Judgment of Conviction, and on April 27, 2017, the Court of Appeals issued an unpublished opinion which affirmed the judgment of conviction. *State v. Ransom*, No. 44871, 2017 Unpublished Opinion No. 598 (Sept. 26, 2017).

On October 5, 2018, Mr. Ransom filed his Petition for Post-Conviction Relief, in which he asserted that his trial counsel was ineffective for: (1) failing to investigate by failing to engage an expert witness to examine text messages and phone calls so that Mr. Ransom could confront allegations relating to those methods of communication; (2) failing to subpoena the records concerning the text messages and phone calls; and (3) failing to present exculpatory witness testimony due to inadequate investigation and preparation. (R., pp.5-649.) Mr. Ransom also asserted that his trial counsel was deficient for misunderstanding the burden of proof and misstating the law in closing arguments. (R., pp.6-7.) Mr. Ransom alleged that trial counsel told the jury "if you believe one of them, you have to decide that you believe them beyond a reasonable doubt, that the other story doesn't have any validity," which he argued was a misstatement of the law. (R., pp.6-7.) The petition went on to allege that, but for this deficient

conduct, which fell below an objective standard of reasonableness, Mr. Ransom would not have been convicted at trial. (R., p.7.) Mr. Ransom attached the transcripts of his preliminary hearing and the jury trial to the petition. (R., pp.10-649.)

The State, in lieu of filing an answer, filed a motion for summary dismissal of Mr. Ransom's petition. (R., pp.653-60.)

Approximately two months later, Mr. Ransom filed an affidavit in which he identified the witnesses and what they would have testified to, had they been interviewed by his trial attorney or testified at trial. (R. pp.678-82.) He also averred that the cell phone records, photographs and text messages were of critical importance to his case; however, his attorney did not provide him with a copy of the results of the defense expert's examination of the phone. (R., p.679.) Mr. Ransom also filed a brief opposing the State's motion for summary dismissal. (R., pp.691-98.)

The district court conducted a hearing on the State's motion for summary dismissal. (R., p.699; *see* 3/5/19 Tr.) Eleven days after hearing the State's motion for summary dismissal, the district court granted the motion and summarily dismissed Mr. Ransom's petition. (R., pp.700, 704-05.) Thereafter, the district court entered a final judgment, from which Mr. Ransom timely appealed. (R., pp.721-24.)

On appeal, Mr. Ransom contends the district court dismissed for reasons other than those identified by the State in conjunction with its motion to dismiss. Accordingly, he never had prior notice of the ultimate reasons for dismissal, or an opportunity to respond. He contends that dismissal without the requisite notice was error.

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

#### A. Standard Of Review

A post-conviction petition initiates a proceeding that is civil, rather than criminal, in nature; and like the plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). But, unlike a complaint in other civil cases, the original post-conviction petition must allege more than merely “a short and plain statement of the claim.” *Id.* at 443-444. Rather, the application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.* In addition, the post-conviction petition must set forth with specificity the legal grounds upon which the application is based. *Ridgley v. State*, 148 Idaho 671, 675 (2010).

A district court may summarily dismiss a post-conviction petition only where the petition, and evidence supporting the petition, fails to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. Summary dismissal of a petition for post-conviction relief is the procedural equivalent of summary judgment under I.R.C.P. 56. *Knutsen v. State*, 144 Idaho 433, 437-38 (Ct. App. 2007). The United States Supreme Court has defined the standard for whether there exists a genuine issue of material fact as whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can



be resolved in favor of either party.” *Id.* at 250. If a genuine factual issue is presented, an evidentiary hearing must be conducted. *Yakovac*, 145 Idaho at 444. The burden of demonstrating the absence of a genuine issue of material fact is on the moving party. *See, e.g., KGF Development, LLC v. City of Ketchum*, 149 Idaho 524 (2010).

The underlying facts alleged by the petitioner “must be regarded as true” for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009).

B. 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

In order to prevail on a claim of ineffective assistance of counsel, the petitioner must show both that counsel’s performance was deficient and that the deficiency prejudiced the petitioner. *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Huck v. State*, 124 Idaho 155, 158-159 (Ct. App. 1993).

Pursuant to Idaho Code Section 19-4906(b), the district court may dismiss a post-conviction applicant’s petition “if the court provides the applicant with notice of its intent to do so, the ground or grounds upon which the claim is to be dismissed, and twenty days for the applicant to respond.” *Buss v. State*, 147 Idaho 514, 517 (Ct. App. 2009). Pursuant to Idaho Code section 19-4906(c), a district court can also dismiss a post-conviction petition upon the State’s motion for summary judgment. *Id.* The grounds for dismissal must be stated “with particularity.” *Saykhamchone v. State*, 127 Idaho 319, 322 (1995) (emphasis in original) (holding district court improperly dismissed petition where the State’s prayer for relief in the

Answer was deficient for not stating its grounds with particularity, and for not stating that it was a motion for summary disposition under I.C. § 19-4906(c)). However, “[a]fter the state files a [I.C. § 4906] subsection (c) motion, a petitioner is still entitled to twenty days to respond, so as to afford an opportunity to establish a material fact issue.” *Saykhamchone*, 127 Idaho at 322. If, after the State files a motion under subsection (c), the district court dismisses a post-conviction petition pursuant to the State’s motion without first providing twenty days notice, the order dismissing the petition will be reversed. *Saykhamchone*, 127 Idaho at 321; *Franck-Teel v. State*, 143 Idaho 664, 668 (Ct. App. 2006). Further, 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*, 127 Idaho at 322; *see also Gibbs v. State*, 103 Idaho 758, 760 (Ct. App. 1982).

In this case, the State filed a motion for summary disposition and supporting brief. (R., pp.653-60.) The State sought dismissal based on the argument that Mr. Ransom’s petition failed to raise a genuine issue of material fact. (R., p.653.) The State provided documentation that the alleged victim’s phone was given to defense investigators who took it to an expert in Spokane, Washington. (R., pp.658, 661-63.) 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.) As for the claim that trial counsel’s closing argument contained errors and misstatements of the law, the State asked the district court to review a portion of the trial transcript, which demonstrated that counsel did understand the applicable laws and burden of proof. (R., p.659.)

At the hearing on the State’s motion for summary dismissal, the prosecutor implied that the expected testimony of one of the potential witnesses, as described in Mr. Ransom’s affidavit, was “ridiculous.” (3/5/19 Tr., p.6, L2 – p.7, L.10.) The prosecutor argued that Mr. Ransom’s claims were not sufficient to justify an evidentiary hearing. (3/5/19 Tr., p.7, Ls.11-13.) The prosecutor told the district court that the phone evidence was bad for Mr. Ransom, “And so we can speculate on how it could potentially help him; but it didn’t help him, it didn’t help him.” (3/5/19 Tr., p.7, Ls.13-16.) The prosecutor presumed that any information on the victim’s phone was given to the defense team, but that the information did not help the defense, “it hurt them.” (3/5/19 Tr., p.7, L.22 – p.8, L.1.) The prosecutor asked the court to summarily dismiss the petition. (3/5/19 Tr., p.8, Ls.2-5.)

Post-conviction counsel asked the district court to consider the big picture—that Mr. Ransom’s public defender was very busy with very little time to speak to her client, and they did not have a good relationship. (3/5/19 Tr., p.8, L.10 – p.9, L.11.) In light of this context, there were not tactical or strategic reasons for the decisions described in the Petition and Mr. Ransom’s affidavit. (3/5/19 Tr., p.9, Ls.12-18.) Post-conviction counsel reminded the court that there was a great deal of phone information that was never examined, and trial counsel did not question the State’s detective on the 500 text messages between the alleged victim and Mr. Ransom. (3/5/19 Tr., p.9, L.19 – p.10, L.22.) Post-conviction counsel clarified that defense counsel’s investigator simply had the information downloaded, not examined by an expert, and there was “nothing in the record to indicate that defense counsel ever looked at any of that information.” (3/5/19 Tr., p.11, Ls.7-25.) Post-conviction counsel pointed out that the prosecutor’s conclusion that there was not much information on Mr. Ransom’s phone was not supported by evidence or testimony, and the record reflected that defense counsel did not know

what was on Mr. Ransom's phone and did not even attempt to find the text messages corroborating Mr. Ransom's averment that he was invited to the location of the alleged rape on the night in question. (3/5/19 Tr., 12, L.12 – p.13, L.20.) Under *Marr v. State*, 163 Idaho 33 (2017), trial counsel does not get the benefit of a strategy presumption "when it's clear that trial counsel simply missed the issue. And in this case, it's clear that [defense counsel] simply missed the issue." (3/5/19 Tr., p.13, Ls.5-20.) Post-conviction counsel asserted that there was a genuine issue of material fact where the parties had contradictory information regarding whether these two phones contained information exculpatory to Mr. Ransom which was not investigated by his trial counsel. (3/5/19 Tr., p.13, L.21 – p.14, L.5.)

Post-conviction counsel pointed out that Mr. Ransom's affidavit was the most cognizant and objective piece of evidence in the post-conviction case, and that most of his statements were uncontroverted by the State. (3/5/19 Tr., p.15, Ls.2-11.) Counsel asked the district court to set the matter for an evidentiary hearing. (3/5/19 Tr., p.15, L.8 – p.16, L.3.)

Eleven days later, the district court dismissed the petition. The court first found that portions of Mr. Ransom's affidavit contained inadmissible evidence. (R., pp.704-05.) The court determined that the record disproved Mr. Ransom's claims that his trial counsel should have engaged a telecommunications expert to aid the defense in confronting the allegations related to text messages and phone call, and that counsel should have subpoenaed the phone carriers for both Mr. Ransom and the alleged victim. (R., pp.706-07.) In so finding, the district court cited to portions of the trial testimony in which defense counsel cross-examined the detective who examined Mr. Ransom's phone. (R., pp.707-09.) The district court next concluded that Mr. Ransom's claim that a detective testified about hundreds of photographs of alleged text messages obtained from the *complaining witness's* phone was disproven by the record where the

detective actually testified about hundreds of text messages from the *defendant's* phone. (R., pp.708-09.) The court thus concluded that that claim was disproven by the record, and also noted that there was no evidence of prejudice as to that claim. (R., p.711.) The court found that Mr. Ransom provided absolutely no admissible evidence as to how trial counsel's failure to engage in a telecommunications expert or subpoena the phone carrier records fell below an objective standard of reasonableness, or how doing so could have changed the outcome of the trial. (R., p.711.)

As for Mr. Ransom's second post-conviction claim—that his trial counsel failed to call several exculpatory witnesses—the district court found that, while Mr. Ransom asserted what these people would have testified to, he failed to submit affidavits from them, thus the summary of expected testimony in his affidavit was speculative. (R., p.713.) In so deciding, the district court relied on *Adams v. State*, 161 Idaho 485 (Ct. App. 2016) (holding petitioner failed to introduce into evidence nonhearsay affidavits from the witnesses as to what they would have testified to and finding that lack of evidence warranted summary dismissal). (R., p.714.) The court concluded that “Mr. Ransom has failed to provide admissible evidence concerning the substance of these witnesses' testimony. He has also failed to establish that Ms. Frost—who was never called—would have been available to testify, and that any of these four individuals would have testified consistently with the statements made in his affidavit.”<sup>1</sup> (R., pp.713-14.)

As for Mr. Ransom's third claim that his trial counsel's performance was deficient for misstating the law at closing argument, the district court concluded that Mr. Ransom was taking a sentence out of context, and there was no evidence of deficient performance or that such deficiency prejudiced Mr. Ransom's case. (R., pp.714-16.)

However, even during the State's hearing on its motion to dismiss, Mr. Ransom was not notified that he needed to prepare and file affidavits from the witnesses who would have testified for the defense, and he was never notified that this could be a basis for dismissal of the claim. (See 3/5/19 Tr.) Although at the hearing, the State claimed that one witness's information was not credible and it was hearsay contained in Mr. Ransom's affidavit, the State never sought dismissal on the basis that Idaho case law required affidavits from each witness as to the substance of their testimony, had they been called at trial. (3/5/19 Tr., p.16, Ls.7-15.) Nor did the district court tell Mr. Ransom that it intended to dismiss the petition for this reason. (See 3/5/19 Tr.)

Mr. Ransom's petition was not dismissed for the reasons sought by the State, where the State only generally stated that it sought dismissal because Mr. Ransom's petition failed to raise a genuine issue of material fact regarding deficient performance and resulting prejudice. (R., pp.653-60.) Regarding the exculpatory witness testimony, the State claimed that Mr. Ransom did not present any facts in support of this conclusory statement, and that if Mr. Ransom had alibi witnesses he should have given that information to trial and post-conviction counsel. (R., p.659.) Notably, the State did not assert that *Adams* required the submission of affidavits from the witnesses defense counsel failed to call at trial. Where the district court summarily dismisses a petition for post-conviction relief on grounds not raised or argued by the State, the district court must give notice. *Gibbs v. State*, 103 Idaho at 760.

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,

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<sup>1</sup> Crystal Frost was identified in Mr. Ransom's affidavit as a person with knowledge of Mr. Ransom's inability to perform sexually when under the influence of alcohol. (R., p.680.)

which is required under *Saykhamchone*. In the process, Mr. Ransom lost his opportunity to present facts and 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 29<sup>th</sup> day of November, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of November, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

SJC/eas»