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### Griffith v. State Respondent's Brief Dckt. 47003

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

**CHRISTOPHER D. GRIFFITH,** )  
 ) **No. 47003-2019**  
 **Petitioner-Appellant,** )  
 ) **Bonneville County Case No.**  
 **v.** ) **CV-2013-1494**  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Defendant-Respondent.** )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BONNEVILLE**

\_\_\_\_\_  
**HONORABLE BRUCE L. PICKETT**  
**District Judge**  
\_\_\_\_\_

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**Attorney General**  
**State of Idaho**

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**PETITIONER-APPELLANT**

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## STATEMENT OF THE CASE

### Nature Of The Case

Christopher D. Griffith appeals from the district court's denial of Griffith's motion to re-open his successive post-conviction case.

### Statement Of The Facts And Course Of The Proceedings

Griffith was convicted of first-degree murder and his judgment of conviction and sentence of life with 22 years determinate were affirmed on appeal. State v. Griffith, 157 Idaho 409, 336 P.3d 819 (Ct. App. 2014). The Court of Appeals rejected Griffith's argument that the district court could fix only ten years of his life sentence as "without merit." Id.

Griffith filed a petition for post-conviction relief, the district court dismissed the petition, and Griffith did not appeal. Griffith v. State, 2015 WL 2185228 at \*1 (Idaho App., 2015).

Griffith filed a successive petition for post-conviction relief. (R., vol. 1, pp. 8-13.) Griffith asserted several claims of ineffective assistance of counsel before and during the criminal trial. (R., vol. 1, p. 10.) Some of the claims were that counsel was ineffective in explaining the benefits of taking the state's plea offer and the risks of going to trial. (R., vol. 1, p. 10.) Other claims related to the conduct of the criminal trial, such as not calling Scott Lee Hill as a witness and convincing Griffith to invoke his right to not testify. (R., vol. 1, p. 10.) Griffith also asserted ineffective assistance of counsel at his first post-conviction proceeding. (R., vol. 1, p. 10.)

The state moved to dismiss Griffith's petition as successive, time-barred, and without evidentiary support. (R., vol. 1, pp. 29-30.) The district court also filed a notice of intent to dismiss the successive petition as untimely. (R., vol. 1, pp. 31-41.)

Griffith responded with an affidavit setting forth his claims of ineffective assistance of trial counsel (R., vol. 1, pp. 48-52); a motion to amend the petition to include a claim of ineffective assistance of appellate counsel (R., vol. 1, pp. 54-56); and a response to the notice of intent to dismiss (R., vol. 1, pp. 57-81). In claiming timeliness, Griffith argued he became aware of the facts and law underlying at least some of his claims in "January of 2013." (R., vol. 1, pp. 76-78.)

Thereafter counsel entered an appearance for Griffith. (R., vol. 1, p. 88.) Counsel then argued the motion to dismiss at the subsequent hearing. (R., vol. 1, pp. 85-86.)

The district court dismissed the petition. (R., vol. 1, pp. 98-105.) The district court found that it was an improper successive petition. (R., vol. 1, pp. 100-03.) The district court also found it untimely. (R., vol. 1, pp. 103-04.) The district court entered judgment on October 1, 2013. (R., vol. 1, p. 106.) Griffith appealed. (R., vol. 1, pp. 145-47.) The Idaho Court of Appeals affirmed the dismissal in 2015. Griffith, 2015 WL 2185228 at \*1.

In 2018 Griffith filed a "Motion to Reopen Post Conviction Case." (R., vol. 1, pp. 175-79.) He supported the motion with an affidavit of trial counsel. (R., vol. 1, pp. 181-84.) Griffith also requested appointment of counsel. (R., vol. 1, pp. 185-86, 195-97.) The state objected to the motion, pointing out it was untimely as to the underlying claims and as to the filing of a motion to reconsider. (R., vol. 1, pp. 188-90.) Griffith responded. (R., vol. 1, pp. 191-94.)

The district court appointed counsel. (R., vol. 2, pp. 206-09.) After a hearing at which appointed counsel argued (R., vol. 2, p. 223), the district court denied the motion on the merits, reaffirming its dismissal of the successive petition as untimely (R., vol. 2, pp. 224-28). Griffith filed a timely notice of appeal. (R., vol. 2, pp. 232-35.)

## ISSUES

Griffith states the issues on appeal as:

1. Does the Rules of Civil Procedure Apply to a Post Conviction case?
2. Did the District Court Err when it Did not apply Civil Rule 60, (b), (6) to the Motion?
3. Was Counsel during the hearing on the Motion Ineffective for not arguing that the Rules of Civil Procedure Apply in a Post Conviction case?
4. Did the District Court Err when it denied the Motion as “Time Barred”?

(Appellant’s brief, p. 5 (verbatim).)

The state rephrases the issues as:

Is Griffith’s claim of error because the district court did not consider the timeliness of his motion moot because the district court denied the motion on its merits?



## ARGUMENT

### Griffith's Claim Of Error Because The District Court Did Not Consider The Timeliness Of His Motion Is Moot Because The District Court Denied The Motion On Its Merits

#### A. Introduction

More than four years after entry of judgment in his successive post-conviction case, Griffith filed a motion to re-open the case supported by an affidavit from his trial counsel. (R., vol. 1, pp. 175-84.) The state opposed the motion for reconsideration on two grounds: that the motion was itself untimely and that the district court had properly dismissed the successive petition as untimely. (R., vol. 1, pp. 188-90; Tr., p. 17, Ls. 13-16.) The district court did not directly reach the timeliness of the motion, but instead found the underlying claims untimely. (R., vol. 2, pp. 224-28.) On appeal Griffith apparently argues the district court erred by not applying I.R.C.P. 60(b)(6) and concluding his motion was timely. (Appellant's brief, pp. 6-8.) He does not, however, challenge the district court's denial of his motion on the merits. (Id.) Because the district court addressed his motion on the merits, Griffith's argument that the district court erred by failing to first decide whether it was timely is moot.

#### B. Standard Of Review

"Justiciability issues, such as mootness, are freely reviewed." State v. Vasquez, 163 Idaho 557, 560, 416 P.3d 108, 111 (2018).

A trial court's dismissal of motions brought under Rule 60(b) is reviewed for an abuse of discretion. Berg v. Kendall, 147 Idaho 571, 578, 212 P.3d 1001, 1008 (2009). The abuse of discretion test looks to whether the district court: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted

consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). “A determination under Rule 60(b) turns largely on questions of fact to be determined by the trial court. Those factual findings will be upheld unless they are clearly erroneous.” Printcraft Press, Inc. v. Sunnyside Park Utilities, Inc., 153 Idaho 440, 449, 283 P.3d 757, 766 (2012) (internal quotations omitted).

C. Griffith’s Claim That The District Court Erred By Not Addressing The Timeliness Of His Motion Is Moot

“An issue is moot if it does not present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief or if a favorable judicial decision would not result in any relief or the party lacks a legally cognizable interest in the outcome.” State v. Abdullah, 158 Idaho 386, 462, 348 P.3d 1, 77 (2015) (internal quotes omitted). Here a favorable decision on Griffith’s argument that his motion was timely would not result in any relief to him because the district court denied the motion on the merits. The district court determined that Griffith’s delay in bringing his claims was “unreasonable.” (R., vol. 2, pp. 226-228.) This ruling would stand whether or not the motion was timely. Griffith’s claim that his motion was timely is moot because the underlying petition is still untimely.

Even if Griffith’s argument could be interpreted as challenging the district court’s denial of his motion on the merits, it fails. Idaho Rule of Civil Procedure 60(b) allows a court to relieve a party from a final judgment or order for the several reasons, including “any other reason that justifies relief.” I.R.C.P. 60(b)(6). “Although the district court has broad discretion in deciding a Rule 60(b) motion, the motion may be granted only upon a

showing of unique and compelling circumstances.” Palmer v. Spain, 138 Idaho 798, 802, 69 P.3d 1059, 1063 (2003) (citing Miller v. Haller, 129 Idaho 345, 348, 924 P.2d 607, 610 (1996)). Moreover, the party seeking relief must also “show, plead or present evidence of facts which, if established, would constitute a meritorious defense to the action.” Ponderosa Paint Mfg., Inc. v. Yack, 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App. 1994). This is so because “it would be an idle exercise and a waste of judicial resources for a court to set aside a judgment if, in fact, there is no genuine justiciable controversy.” Id.

The district court denied the motion because the claims of ineffective assistance of trial counsel were untimely. (R., vol. 2, pp.226-28.) Application of the relevant legal standards shows this to be true. Therefore the district court did not err in denying the motion on the merits.

The timeliness of a post-conviction claim is measured “from the date of notice, not from the date a petitioner assembles a complete cache of evidence.” Charboneau v. State, 144 Idaho 900, 905, 174 P.3d 870, 875 (2007). Equitable tolling of the post-conviction statute of limitation may be appropriate in cases involving “important due process issues.” Rhoades v. State, 148 Idaho 247, 251, 220 P.3d 1066, 1070 (2009) (citations omitted). Such claims, however, “must still be pursued in a timely fashion,” meaning within a reasonable time from when the claim is discovered. Rhoades, 148 Idaho at 251, 220 P.3d at 1070 (citing Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007)). Thus, if the factual basis of a claim is known, or should have been known, within the limitation period, tolling is not appropriate. Id. at 253, 220 P.3d at 1072. Ineffective assistance of trial counsel is an example of a claim that “should be reasonably known immediately upon the

completion of the trial and can be raised in a post-conviction petition.” Id. (quotations and citations omitted).

Griffith contended in his motion that he should be allowed to re-open the successive post-conviction case “based upon the Affidavit of former Counsel.” (R., vol. 1, p. 176 (capitalization original).) That affidavit set forth counsel’s actions at the time of trial. (R., vol. 1, pp. 181-84.) Griffith did not claim he was unaware of counsel’s actions. (R., vol. 1, pp. 175-84.) Indeed, the successive petition is based on those actions. (R., vol. 1, pp. 8-13.) Griffith’s claims are not rendered timely by his years-long delay in getting an affidavit to support them. The district court correctly concluded there was no genuine justiciable controversy because the claims were untimely, and therefore did not err in denying the motion to re-open on the merits.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court’s denial of the motion to re-open the untimely successive petition for post-conviction relief.

DATED this 22nd day of January, 2020.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 22nd day of January, 2020, 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:

CHRISTOPHER D. GRIFFITH  
IDOC #52664  
ICIO – UNIT A1-113A  
381 W. HOSPITAL DRIVE  
OROFINO, ID 83544

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

KKJ/dd