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IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTOPHER MICHAEL CONATY,)	
)	NO. 47563-2019
Petitioner-Appellant,)	
)	ADA COUNTY NO. CV01-18-
v.)	17506
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE SAMUEL A. HOAGLAND
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 Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	5
ARGUMENT	6
The District Court Erred By Summarily Dismissing Mr. Conaty’s Petition For Post-Conviction Relief Because His Claim That His Trial Attorney Was Ineffective For Failing To Communicate With Him Raised A Genuine Issue Of Material Fact	6
A. Legal Standards	6
B. Mr. Conaty’s Claim That He Would Not Have Pled Guilty, But For His Trial Attorney’s Failure To Communicate With Him, Raised A Genuine Issue Of Material Fact	7
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

Cases

Booth v. State, 151 Idaho 612 (2011).....7

Hill v. Lockhart, 474 U.S. 52 (1985)7

McKeeth v. State, 140 Idaho 847 (2004).....6

Muchow v. State, 142 Idaho 401 (2006).....7

Odiaga v. State, 130 Idaho 915 (1997)9

Ridgley v. State, 148 Idaho 671 (2010).....6, 7

Stanfield v. State, 165 Idaho 889 (2019)6, 7

Strickland v. Washington, 466 U.S. 668 (1984)6, 8

Workman v. State, 144 Idaho 518 (2007).....6

Statutes

I.C. § 19-4901(b).....9

I.C. § 19-4906(b).....6, 8

STATEMENT OF THE CASE

Nature of the Case

Christopher Michael Conaty appeals from the district court's judgment dismissing his petition for post-conviction relief. Because Mr. Conaty's claim that his trial attorney was ineffective for failing to communicate with him raised a genuine issue of material fact, the district court erred by summarily dismissing that claim. This Court should vacate the judgment and order dismissing Mr. Conaty's post-conviction petition, and remand this case to the district court for further proceedings on his claim regarding counsel's failure to communicate.

Statement of Facts and Course of Proceedings

Mr. Conaty pled guilty to aggravated battery in Ada County Case No. CR-01-16-36106, and was sentenced to serve between three and twelve years in prison, to run consecutively to the sentence he was serving for an earlier conviction. (R., p.59.) He filed a timely petition for post-conviction relief alleging, among other things,¹ that his "attorney only met with [him] one time, therefore didn't have time to adequately prepare [his] case." (R., p.8.) In his affidavit, he elaborated: "[M]y attorney only came out to meet with me one time. I would call asking her to do things for my case. She said not to speak about it over the phone. Finally we had an appointment she sent a letter cancelling it. By the time she came to see me we had less than 45 days until trial with deadlines due only a couple weeks to do anything for me." (R., p.11.) He also attached letters from his trial attorney in which she apologized for not visiting him (R., pp.13-14), and his guilty plea advisory form, in which he wrote that there were witnesses who could show he was innocent, his attorney refused to file motions for him or call witnesses at

¹ Mr. Conaty raised additional claims in his original and amended petitions, but does not advance those claims on appeal.

trial, he was not satisfied with his attorney, and he believed his attorney was ineffective (R., pp.19–27).

After being appointed counsel, Mr. Conaty filed an amended petition which incorporated his original petition and reiterated that his trial attorney was ineffective for failing to communicate with him and that, absent that deficiency, he would have gone to trial rather than plead guilty:

15. Counsel failed to communicate with the Petitioner more than once, in person or telephonically, prior to his guilty plea. This is particularly important as there was no video surveillance of the incident, and the defense primarily relied on eyewitness observations of the Petitioner and the complaining witness.

16. In fact, Counsel even refused to communicate by phone, despite her stated inability to meet with the Petitioner due to inclement weather.

.....

18. A case of this magnitude and the complexities therein, warrants greater communication than one in-person visit to the prison.

.....

20. By the time that Counsel finally met with the Petitioner, he was only 45 days from trial.

21. Consequently, he had lost confidence that he would be adequately represented if he had proceeded to trial.

22. The Petitioner pled guilty only out of concern that his attorney would be unprepared at the time of trial, due to her established lack of communication.

23. Had Counsel provided adequate communication with the Petitioner, he would have proceeded to trial.

(R., pp.52–53.)

The State denied many of Mr. Conaty's allegations and moved for summary dismissal. (R., pp.80–84.) It provided the court with transcripts of the preliminary hearing, the entry of plea hearing, and the sentencing hearing. (R., pp.85–110.) In its memorandum in support of summary disposition, the State argued that Mr. Conaty's claim that his attorney was ineffective for failing to communicate did not raise a genuine issue of material fact. (R., pp.135–37.) As for deficient performance, the State asserted that Mr. Conaty failed to disclose all of the facts to the court, including that he did go to trial on April 24, 2017, but the court declared a mistrial; he did

not provide any admissible evidence about any communications with his attorney between April 24, 2017, and his guilty plea on July 27, 2017; and he told the court when pleading guilty that he did not need more time with his attorney. (R., pp.135–36.) As for prejudice, the State argued that his claim that he would have gone to trial had his attorney communicated with him was unsupported by any evidence and contrary to the uncontroverted facts. (R., pp.136–37.)

Mr. Conaty responded to the State’s motion by arguing that his sworn affidavit explained that “he had not met with his attorney more than once prior to pleading guilty, that his attorney flatly refused to speak with him even by phone, that his faith was shaken in his attorney by the time he chose to plead guilty, and that his shaken faith induced him to plead guilty rather than proceeding to trial.” (R., p.149.) That Mr. Conaty met with his attorney to fill out a guilty plea questionnaire had no bearing on his attorney’s failure to communicate with him prior to making the decision to plead guilty, and the guilty plea questionnaire itself indicated that Mr. Conaty was unhappy with his attorney. (R., pp.148–49.) Thus, Mr. Conaty had presented sufficient evidence to require an evidentiary hearing. (R., p.149.)

After holding a hearing on the State’s motion (*see generally* Tr.), it summarily dismissed Mr. Conaty’s ineffective assistance of counsel claim regarding his attorney’s failure to communicate. It explained that, assuming defense counsel only met with Mr. Conaty once and was thus deficient, Mr. Conaty had not shown prejudice:

Here, Petitioner claimed that he did not feel confident to proceed to trial given his attorney’s lack of communication. However, the record is clear that he did in fact proceed to trial, which ended in a mistrial. Petitioner answered under oath on the Guilty Plea Advisory Form that he had sufficient time to discuss the case with his attorney. Petitioner affirmed under oath at the change of plea hearing that he had the time and opportunity to ask his attorney any question that he might have had about anything he did not understand. The only complaint lodged by the Petitioner in the Guilty Plea Advisory Form and at the change of plea hearing was that his attorneys failed to file motions and call witnesses for trial. It is clear that Petitioner communicated these desires to his attorney(s), but for tactical and

strategic reasons, they did not follow through with Petitioner's requests. Petitioner failed to specifically set forth how more time with his attorney would have changed his decision to plead guilty given his statements made under oath that he believed he had sufficient time to discuss pleading guilty with his attorney.

(R., p.167.) The court entered a judgment dismissing the petition (R., p.191), and Mr. Conaty timely appealed (R., pp.193–96).

ISSUE

Did the district court err by summarily dismissing Mr. Conaty's petition for post-conviction relief because his claim that his trial attorney was ineffective for failing to communicate with him raised a genuine issue of material fact?

ARGUMENT

The District Court Erred By Summarily Dismissing Mr. Conaty's Petition For Post-Conviction Relief Because His Claim That His Trial Attorney Was Ineffective For Failing To Communicate With Him Raised A Genuine Issue Of Material Fact

The district court dismissed Mr. Conaty's claim that his attorney was ineffective for failing to communicate with him after concluding that the record contradicted his sworn assertion that, had his attorney adequately communicated with him, he would not have pled guilty and would have gone to trial. Because the record does not contradict, and even supports, Mr. Conaty's asserted prejudice, the district court erred by dismissing that claim.

A. Legal Standards

Post-conviction cases are civil in nature. *Stanfield v. State*, 165 Idaho 889, 454 P.3d 531, 536 (2019). A district court may summarily dismiss a post-conviction petition only if it does not present a genuine issue of material fact "based on the pleadings, depositions and admissions together with any affidavits on file." *Id.* (quoting *Ridgley v. State*, 148 Idaho 671, 675 (2010); *Workman v. State*, 144 Idaho 518, 523 (2007)); *see also* I.C. § 19-4906(b). In determining whether a genuine issue of material fact exists, "the courts must liberally construe the facts," "draw reasonable inferences in favor of the petitioner," and "accept the petitioner's un rebutted allegations as true. . . ." *Stanfield*, 454 P.3d at 536 (internal citations and quotation marks omitted).

To show that a claim of ineffective assistance of counsel presents a genuine issue of material fact, the petitioner must allege facts which demonstrate that counsel's performance fell below a reasonable standard and that the petitioner was prejudiced by that deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Stanfield*, 454 P.3d at 536–37. When the petitioner pled guilty, the petitioner must demonstrate that "there is a reasonable probability that,

but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Booth v. State*, 151 Idaho 612, 621 (2011) (quoting *Ridgley*, 148 Idaho at 676; *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

The decision of whether to summarily dismiss a petition for post-conviction relief is a question of law which this Court freely reviews. *Muchow v. State*, 142 Idaho 401, 402 (2006).

B. Mr. Conaty's Claim That He Would Not Have Pled Guilty, But For His Trial Attorney's Failure To Communicate With Him, Raised A Genuine Issue Of Material Fact

Mr. Conaty alleged his attorney's failure to communicate prejudiced him because "he had lost confidence that he would be adequately represented if he had proceeded to trial," he "pled guilty only out of concern that his attorney would be unprepared at the time of trial, due to her established lack of communication," and "[h]ad Counsel provided adequate communication . . . , he would have proceeded to trial." (R., pp.52–53.) Contrary to the district court's conclusion, nothing in the record contradicts that sworn assertion, and thus the court was required to accept it as true. *See Stanfield*, 454 P.3d at 536–37; R., pp.166–67.

To begin, the district court erroneously concluded that Mr. Conaty's decision to go to trial before pleading guilty contradicted his claim of prejudice. (*See* R., p.167 ("[T]he record is clear that he did in fact proceed to trial, which ended in a mistrial.")) Although the details surrounding the mistrial aren't clear, that Mr. Conaty elected to proceed to trial three months before he pled guilty does not undermine his claim that he later decided to plead guilty due to his attorney's lack of communication. Indeed, seeing his attorney's preparedness, or lack thereof, at the first trial could have certainly compounded Mr. Conaty's concerns with going to trial the second time around.

Next, the district court erroneously concluded that Mr. Conaty's guilty plea advisory form and statements at the plea hearing, in which he acknowledged that he had "sufficient time" to discuss his case with his attorney, contradicted his claim of prejudice. (*See R.*, p.167 ("Petitioner answered under oath on the Guilty Plea Advisory Form that he had sufficient time to discuss the case with his attorney. Petitioner affirmed under oath at the change of plea hearing that he had the time and opportunity to ask his attorney any question that he might have had about anything he did not understand. . . . Petitioner failed to specifically set forth how more time with his attorney would have changed his decision to plead guilty given his statements made under oath that he believed he had sufficient time to discuss pleading guilty with his attorney."), p.22.) If anything, those statements go to create an issue of material fact with respect to deficient performance, which the district court assumed for the purposes of its analysis. *See I.C. § 19-4906(b); Strickland*, 466 U.S. at 687; *R.*, pp.52-53, 90-92, 166-68. And, as discussed by post-conviction counsel below, having "sufficient time" to talk with defense counsel doesn't mean that defense counsel actually communicated with him during that time. (*See Tr.*, p.23, Ls.3-8 ("The State says he says that he had enough time. I don't think this is a question of whether he had enough time. Our perspective is that when his relationship with his lawyer deteriorated to the point that it did, he felt he had no choice. This wasn't a question of did he have enough time to think about it.")) In other words, if counsel demonstrated over the course of Mr. Conaty's case that she would not adequately communicate with him, giving Mr. Conaty "more time" to talk with his attorney would amount to giving him more time to attempt, futilely, to convince her to talk with him.

Finally, the district court erroneously concluded that Mr. Conaty's failure to assert this claim at the change of plea hearing contradicts his claim of prejudice. (*R.*, p.167 ("The only

complaint lodged by the Petitioner in the Guilty Plea Advisory Form and at the change of plea hearing was that his attorneys failed to file motions and call witnesses for trial.”.) But Mr. Conaty had no obligation to preemptively assert potential post-conviction claims at his change of plea hearing. See I.C. § 19-4901(b); *Odiaga v. State*, 130 Idaho 915, 917 (1997) (“[T]he ordinary requirements for preservation of an issue on direct appeal from a judgment of conviction do not apply to post-conviction proceedings.”). And Mr. Conaty mentioned the two motions that his attorney failed to file and her refusal to call witnesses at trial in response to two specific questions, neither of which dealt with his attorney’s level of communication with him. (R., p.22 (“Is there anything you have requested your attorney to do that your attorney has not done?”), p.23 (“Are there any motions or other requests for relief that you believe should still be filed in this case?”).) If anything, though, Mr. Conaty’s general assertion on the guilty plea advisory form and at the guilty plea hearing that his attorney was “ineffective” (R., p.23 (purporting to reserve the right to appeal “misrepresentation ineffective counsel”), and that he was not satisfied with his attorney (R., p.26), supports his claim that he pled guilty because he lost trust in his attorney due to her failure to communicate.

CONCLUSION

Because nothing in the record contradicts Mr. Conaty's sworn assertion that he pled guilty due to his attorney's lack of communication, and parts of the record in fact support that assertion, the district court erred by dismissing his claim of ineffective assistance of counsel for failure to communicate. Mr. Conaty respectfully requests that this Court vacate the judgment and order dismissing his post-conviction petition and remand this case to the district court for further proceedings on that claim.

DATED this 11th day of March, 2020.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

MPW/eas