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Eddington v. State Respondent's Brief Dckt. 44353

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RONALD EDDINGTON,)	
)	No. 44353
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2015-16861
)	
STATE OF IDAHO,)	
)	
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**

HONORABLE LYNN G. NORTON, District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Scott Eddington appeals from the district court's order summarily dismissing all the claims in his petition for post-conviction relief.

Statement Of Facts And Course Of The Proceedings

As set forth in the Presentence Report ("PSI"), the underlying facts of Eddington's criminal convictions are as follows:

In summary, on 8/9/13 at approximately 0418 hours, Meridian Police Officers were dispatched regarding an assault with a deadly weapon. Once at her residence, Cpl. Ford made contact with Clarence Belue who reported his ex-son-in-law had tried to kill his daughter, Carrie Eddington. Ms. Eddington was crying and was extremely upset. She said her ex-husband Ronald Eddington broke into her house and held her at gun point stating he was going to kill her.

Ms. Eddington stated she was awoken when her bedroom light came on at approximately 0230 to 0300 hours. She saw her ex-husband standing to the side of her bed holding a gun that was black and silver. She reported Mr. Eddington told her he was going to kill her and then kill himself. She pleaded and begged him not to kill her stating the children needed both of them alive.

Ms. Eddington indicated she was so afraid she began talking to Mr. Eddington telling him things she felt he wanted to hear. He told her he was upset because she would not talk to him or answer his e-mails and text messages. He said he was there to "end it all."

During their conversation, Ms. Eddington noted Mr. Eddington pointed the gun at her several times. He would go from pointing the gun at her to pointing it at himself. He told her he was going to shoot her but not to worry because she would not feel pain because the bullets he chose were hollow and she would die instantly and not feel any pain.

Ms. Eddington paced back and forth stating she could not believe she was alive. She feared Mr. Eddington was going to kill her and himself and possibly his current pregnant wife. She was so upset she was unable to provide a written statement. She reported telling Mr. Eddington he could have full custody of their children and allowed him to kiss her several times on the cheek to keep him calm. She stated she was not sure how she did it but she convinced him to leave the house and not kill her.

Ms. Eddington believed Mr. Eddington had been at her house for about an hour. When he left, she told him to text her and let her know he made it home safe because she wanted to insure he actually left. He told her if he left she had to promise not to call the police. At 0355 hours, she received a text message from her ex-husband stating he was back home.

After Ms. Eddington received the text from her ex-husband, she reported she was afraid to call the police fearing if he found out he would kill their 3 children and kill her. She laid in bed but was afraid Mr. Eddington would return and kill her. She called her father who then called the police.

(PSI, p.3.)¹

The state charged Eddington with second degree kidnapping, burglary, aggravated assault, and with using a deadly weapon in the commission of a felony. (R., p.62.) Pursuant to a plea agreement, Eddington pled guilty to second degree kidnapping and aggravated assault, and the two other charges were dismissed. (See generally 1/16/14 Tr.) The district court sentenced Eddington to a unified term of 22 years with ten years fixed for second degree kidnapping, and a concurrent unified term of five years with five years fixed for aggravated assault. (R., pp.58-61.) Eddington filed a Rule 35 motion for reduction of sentence (R., p.64), which was denied (R., p.65). Although Eddington filed a notice of appeal (R., p.64), he subsequently withdrew his appeal (R., pp.65, 331).

According to the district court, Eddington pursued post-conviction relief as follows, with bracketed references to the record:

The Verified Petition for Post-Conviction Relief was filed on September 15, 2015. [R., pp.6-57.] Petitioner stated eight bases for relief sought. [Id.] Seven are based on ineffective assistance of counsel, and the eighth is based on the trial court's failure, "to perform any conflict of interest inquiry when it was introduced that Mr. Bartlett would be

¹ The state has filed a pending motion to augment the appellate record with the PSI. The post-conviction court took judicial notice of the PSI in an Order filed January 20, 2016. (R., pp.316-317.)

representing both [Petitioner] and Diana [Petitioner's mother] on related criminal charges." [R., p.7.]

Respondent State of Idaho filed a Motion for Summary Dismissal of Petition for Post-Conviction Relief on January 8, 2016. [R., pp.265-294.] No supporting affidavit was filed, and the memorandum of points and authorities was combined with the motion. [Id.] Petitioner filed responsive briefing, with supporting affidavit, on January 20, 2016. [R., pp.295-312.] The same day, the Court entered an order taking judicial notice of certain portions of the underlying criminal record, including the presentence report, the guilty plea form entered January 16, 2014, and the Indictment filed August. [sic] 20, 2013. [R., pp.316-329.]

No reply briefing was filed, and therefore the Court has considered such briefing waived. Petitioner withdrew the appeal he initially filed so there is not [sic] completed or ongoing appeal at this point.

(R., p.331 (footnotes omitted).) Explaining that no party had noticed the matter for a hearing, the district court declined to hear arguments on the state's motion for summary dismissal and, based on the pleadings and briefs submitted, entered a Memorandum Decision and Order Granting Summary Dismissal and a Final Judgment. (R., pp.330-346, 355-356.) Eddington filed a timely notice of appeal. (R., pp.350-354.)

ISSUES

Eddington presents the following issues on appeal:

- A. The district court erred in granting summary dismissal of Mr. Eddington's claims of ineffective assistance of counsel cited in his petition for post-conviction relief.
- B. The district court should have granted Mr. Eddington the relief he was seeking pursuant to a summary disposition under I.C. § 19-4906(c).
- C. The district court abused its discretion in failing to grant an evidentiary hearing on the claims cited in Mr. Eddington's petition for post-conviction relief.

(Appellant's Brief, pp.9-10 (capitalization modified).)

The state phrases the issue on appeal as:

Has Eddington failed to establish error in the summary dismissal of his petition for post-conviction relief?

ARGUMENT

Eddington Has Failed To Show Error In The Summary Dismissal Of His Post-Conviction Petition

A. Introduction

On appeal, Eddington challenges the district court's order granting the state's motion for summary dismissal of his post-conviction claims. (See generally Appellant's Brief.) Eddington has failed to establish the district court erred in summarily dismissing his petition.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Eddington Has Failed To Establish Any Error In The District Court's Summary Dismissal Of His Post-Conviction Petition

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. "To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 "if the applicant's evidence raises no genuine issue of material fact" as to each

element of petitioner's claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297.

While a court must accept a petitioner's un rebutted allegations as true, 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. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). If the alleged facts, even if true, would not entitle the petitioner to relief, the trial court is not required to conduct an evidentiary hearing prior to dismissing the petition. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)). "Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law." Id.

In its Memorandum Decision and Order Granting Summary Dismissal (R., pp.330-346), the district court articulates the applicable legal standards and sets forth, in detail, the reasons Eddington failed to establish a genuine issue of material fact on any of his claims. The state fully adopts the analysis and reasoning in the district court's Memorandum Decision and Order Granting Summary Dismissal as its basis for affirming the summary dismissal of Eddington's post-conviction claims, and incorporates that Decision and Order (attached as Appendix A) into this brief as if fully set forth herein. In addition to the district court's reasoning for granting the state's motion for summary dismissal, the state makes the following arguments and comments in regard to the summary dismissal of several of Eddington's claims.

1. Trial Counsel's Failure To Present Favorable Testimony And Mitigating Mental Health Evidence At The Sentencing Hearing

In summarily dismissing Eddington's claim that his trial counsel was ineffective "by refusing to permit favorable witnesses to testify on [his] behalf at the sentencing hearing or present sufficient mitigating evidence of [his] longstanding mental health challenges"² (R., p.28), the district court explained:

In sum, Petitioner received this sentence because of the seriousness of the crime. There is not a reasonable probability, even assuming that trial counsel had done what Petitioner now says he should have done, that the sentence he received would have been any more lenient. Further, each of these actions is within the range of tactical decisions allowable by defense counsel in a criminal case. Petitioner has failed to establish that these actions are impermissible as a matter of law. Thus, Petitioner has failed to establish any issue of fact as to whether the sentence would have been different had counsel acted as Petitioner believes counsel should have, or that counsel acted outside of the range of permitted conduct.

(R., p.345 (footnote omitted).)

To further buttress the district court's summary dismissal of Eddington's claim, it should be noted that five of the seven persons he contends his trial counsel should have called as witnesses at the sentencing hearing – Roxie Davidson, Ronald Eddington, Kathleen Eddington, Brian Davis, and Coleen Cline – provided letters supporting Eddington prior to that hearing. (See attachments to PSI.) Therefore, in making its sentencing decision, the trial court was not deprived of the favorable views those witnesses had of Eddington.

² As explained by the district court, Eddington also alleged that, during the sentencing hearing, his trial counsel was ineffective by (1) failing to adequately cross-examine the state's witnesses, (2) failing to object to irrelevant or inaccurate testimony, and (3) making a negative closing sentencing argument. (R., p.344.) The district court's Memorandum Decision and Order Granting Summary Dismissal (see R., pp.344-345 (Appendix A)), adequately addresses these issues without the need for further comment.

Although the two other non-witnesses did not provide letters to the sentencing court, their testimony would not have impacted the court's sentencing decision at all. Assuming that Tore Beal-Gwartney, Eddington's family law attorney, would have provided unfavorable information about Carrie Eddington (the victim) in regard to a contempt charge "filed against [her] and described [her] documented parental alienation attempts" (Appellant's Brief, p.32), such information would not have mitigated the extremely serious criminal behavior Eddington exhibited when he broke into Carrie's home during the night and woke her up at gunpoint saying he was going to kill her, then himself.

Of similar insignificance is Eddington's complaint that his trial counsel did not call Dr. Jeanine Stone, his treating physician, to testify about his depression and anxiety, and that counsel failed to present mitigating evidence of Eddington's mental health challenges. (Appellant's Brief, p.33.) Dr. Stone's testimony would have added little to the information presented in Mountain States Counseling & Psychological Services' 32-page "Domestic Assault/Battery Risk Assessment & Psychological Evaluation" (hereinafter "Evaluation") prepared by Dr. Michael Johnston at the request of both parties.³ (See 3/5/14 Evaluation, attached to PSI; see also R., p.111 (Tr., p.47, Ls.2-6).) According to the Evaluation, Eddington identified his problems as including depression and anxiety (id., p.3), and those (and other) mental health issues were addressed (id., pp.8-9), culminating with a DSM-5 diagnosis that Eddington suffered from "major depression, moderate (history of severe), with anxious distress," and "persistent

³ The district court explained at the outset of the sentencing hearing that it had reviewed the evaluations appended to the presentence report, including the psychological evaluation performed by Dr. Johnston. (R., p.100 (Tr., p.1, L.13 – p.2, L.15).)

depressive disorder (dysthymia), moderate, with anxious distress” (id., p.13 (capitalization modified)).

Eddington has failed to show any error in the summary dismissal of this claim under the deficient performance and prejudice prongs of Strickland v. Washington, 466 U.S. 668, 687-688 (1984).

2. Trial Counsel's Failure To Become Familiar With The Facts Of The Case

Eddington contends the district court erred in summarily dismissing his claim that his trial counsel was ineffective by being unprepared in the following three ways: (1) refusing to listen to audio recordings of the initial police interviews of Carrie Eddington in which she made several sympathetic statements about Eddington, (2) failing “to obtain and review the 2011 custody deposition that clearly described Mr. and Ms. Eddington’s failed reconciliation attempt and Mr. Eddington’s legitimate access to Ms. Eddington’s house during that time[.]” and (3) failing to research Eddington’s “mental health issues and using this information to mitigate [Eddington’s] actions.” (Appellant’s Brief, pp.35-37.)

In summarily dismissing Eddington’s three-part claim, the district court explained, “In this contention, Petitioner reiterates previously cited ‘sentencing errors’ he attributes to trial counsel, as well as what he claims was counsel’s insufficient investigation of the police audios of interviews with the victim.” (R., p.345.) The court did not need to repeat its determination that Eddington failed to show prejudice because he failed to demonstrate that, absent the claimed errors, the result of his sentencing hearing would have been different in regard to his reiterated “sentencing errors” claims. (See R, pp.345-346; § C-1, supra.)

Eddington argues that the alleged failure of his trial counsel to review the audio recordings of Carrie Eddington's initial police interviews constituted ineffective assistance because she made several statements sympathetic to Eddington, such as his need for help, that she felt bad because Eddington's wife was pregnant, and that he is generally a good person. (Appellant's Brief, p.36.) However, Carrie's statements were made in the aftermath of Eddington's frightening and malevolent crimes, while she "was extremely upset and unable to stand still[,] pacing back and forth on the floor and too upset to even give a written statement. (PSI, attached Meridian P.D. Narrative Report of Cpl. Mark Ford, DR#2013-4641, p.2.) That Carrie made sympathetic comments about Eddington at that vulnerable time does not lessen Eddington's culpability for his actions in any way, especially in contrast to Carrie's more considered comments at the sentencing hearing. (See R., pp.101-103 (Tr., p.6, L.1 – p.14, L.21).)

Based on the district court's ruling (see R., p.345-346) and the above comments, Eddington has failed to show any error in the summary dismissal of his claim that his trial counsel was ineffective for failing "to fully familiarize himself with the discovery/ facts of the case" (R., p.43).

3. The District Court Correctly Denied Eddington's Motion For Summary Disposition And His Request For An Evidentiary Hearing

Eddington may be arguing that because the state did not present any evidence to controvert his claims, he is entitled to summary disposition in his favor. (See Appellant's Brief, p.48.) There is simply no such rule. To the contrary, as explained by the district court:

Like a plaintiff in a civil action, a petitioner seeking post-conviction relief must bear the burden of proving the allegations upon which Petitioner for

post-conviction relief is based by a preponderance of the evidence. I.C.R. 57(c); *Grube v. State*, 134 Idaho 24, 27, 995 P.2d 794, 797 (2000). . . .

Summary dismissal of a petition for post-conviction relief is appropriate if “the petitioner has not presented evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof.” [*Pratt v. State*, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000).] . . . “Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant’s evidence because 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.” *Frank-Teel v. State*, 143 Idaho 664, 668, 152 P.3d 25, 29 (Ct. App. 2006).

(R., p.333.) Regardless of whether the state presented any evidence, Eddington had the burden of presenting a *prima facie* case supporting each allegation of his post-conviction claims.

Moreover, because the district court properly granted the state’s motion for summary dismissal, Eddington can claim no error in the court’s decision to not grant his motion for summary disposition or its refusal to grant him an evidentiary hearing.

CONCLUSION

The state respectfully requests this Court affirm the district court’s order summarily dismissing Eddington’s petition for post-conviction relief.

DATED this 18th day of January, 2017.

/s/ John C. McKinney
JOHN C. MCKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2017, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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/s/ John C. McKinney
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Deputy Attorney General

JCM/dd