2-7-2017

Eddington v. State Appellant's Reply Brief Dckt. 44353

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

RONALD EDDINGTON, Petitioner/Appellant, -vs- STATE OF IDAHO, Respondent.	)	**No. 44353** **Case No. CV PC 15 16861**

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, in and for Ada County

Hon. Lynn Norton, District Judge

ELLEN N. SMITH
SMITH HORRAS, P.A.
5561 N. GLENWOOD ST.
BOISE, ID 83714

ATTORNEY FOR APPELLANT

LAWRENCE WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

ATTORNEY FOR RESPONDENT

I. TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

Respondent summarily argues that the District Court correctly dismissed all of Mr. Eddington's claims summarily and without a hearing. However, Respondent provided very little analysis or argument to support its position. As thoroughly discussed in Mr. Eddington's opening brief, Mr. Eddington set forth eight (8) different ways, collectively and/or individually, that he was deprived of effective assistance of counsel. Nevertheless, Respondent selected only two (2) relatively small issues out of Mr. Eddington's eight (8) specific and well documented reasons that his trial counsel was ineffective. The two (2) problematic issues singled out by Respondent are only a small fraction of the collective errors resulting the deprivation of Mr. Eddington receiving his constitutionally guaranteed effective assistance of counsel. Other than the conclusory assertion that the District Court "correctly" dismissed Mr. Eddington's claims, Respondent fails to address the majority of Mr. Eddington's concerns set forth in his opening brief.

Moreover, even though Respondent requested two (2) separate extensions delaying this matter approximately sixty (60) days while Mr. Eddington remains incarcerated, Respondent's substantive briefing turned out to be only eleven (11) pages (not including signature page and attached exhibit).

II. ARGUMENT

As stated previously, if the petition, affidavits, and other evidence supporting the petition allege facts that, if true, would entitle the petitioner to relief, the post-conviction claim may **not** be summarily dismissed. Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); Sheahan v. State, 146 Idaho 101, 104, 190 P.3d 920, 923 (Ct.App. 2008). Consequently, if a

genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. Goodwin, 138 Idaho at 272, 61 P.3d at 629.

Just as in civil summary judgment motions pursuant to I.R.C.P. 56, all inferences must be liberally construed in favor of the nonmoving party. Id. Claims may only be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. Kelly v. State, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010); DeRushé v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009).

Respondent Completely Ignored the Fact that Mr. Eddington was Deprived Effective Assistance of Counsel Because His Trial Counsel Was Operating Under an Actual Conflict of Interest. Notably, Respondent failed to discuss Mr. Eddington's extensive briefing, reasoning and analyis regarding the glaring conflict of interest of Mr. Eddington's trial counsel (roughly 35 pages of the 50 page brief). In fact, the words "conflict of interest" do not even appear anywhere in the Respondent's brief (other than in the District Court's decision attached as an exhibit). It is unclear as to why Respondent refused to discuss the central issues in this case. What is clear, however, is that it is essential that this Court not take Respondent's lead and simply ignore the fact Mr. Eddington was denied his Sixth Amendment right to conflict free and effective assistance of counsel. Mr. Eddington's recitation of the facts, his application of the law and his extensive analysis deserve a full and fair review.

Interestingly, by ignoring the obvious actual conflict of interest in the underlying criminal case, Respondent was able to pretend a higher standard applied in this matter. Nevertheless, pursuant to Idaho law, if a defendant shows that his counsel actively represented conflicting

interests, there is a high probability of prejudice arising from multiple concurrent representation. Sparks v. State, 92 P.3d 542, 548, 140 Idaho 292, 298 (Idaho App. 2004). In a nutshell, the Idaho Court of Appeals has held that the second prong of the Strickland test demonstrating prejudice is **presumed** in such conflict of interest cases. Id. Instead, in order to establish a violation of the Sixth Amendment of the United States Constitution, a defendant must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. See Cuyler v. Sullivan, 446 U.S. 335, 348 (1980).

To demonstrate an "actual conflict," a defendant must first show that his counsel actively represented conflicting interests and second, that the conflict adversely affected his counsel's performance. Cuyler, 446 U.S. at 350; Chippewa v. State, 156 Idaho 915, 921, 332 P.3d 827, 833 (2014). See Mickens v. Taylor, 535 U.S. 162, 171 (2002) (Actual conflict is defined by its effect on counsel, not by whether there is a "mere theoretical division of loyalties"). Please see Appellant's Opening Brief pps. 14-21 for detailed analysis of Mr. Bartlett's actual conflict of interest.

To establish an adverse effect, the petition must: (1) identify a plausible alternative defense strategy or tactic; (2) show that the alternative strategy or tactic was objectively reasonable; and (3) show that defense counsel's failure to pursue that strategy or tactic was linked to the actual conflict. Chippewa, 156 Idaho at 919-22, 332 P.3d at 831-34. Although not binding authority, it is certainly instructive that in the 7th Circuit, "a defendant can establish ineffective assistance of counsel by showing that his attorney pressured him to plead guilty because of the attorney's conflict of interest." Daniels v. United States, 54 F.3d 290, 295 (7th Cir.1995).

Notably, the United States Supreme Court has stated:

> [I]n a case of joint representation of conflicting interests the evil-it bears repeating-is in what the advocate finds himself compelled to

> refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process. It may be possible in some cases to indentify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, supra, 435 U.S., at 490 -491.

For the same reasons as cited above, it would typically be futile to attempt to determine precisely how counsel's conduct would have been different had he not been under conflicting duties. For that reason, a petitioner need only demonstrate that a conflict of interest actually affected the adequacy of his lawyer's performance. Sparks v. State, 140 Idaho at 296.

It is undisputed that Mr. Bartlett, Mr. Eddington's trial counsel, represented Mr. Eddington and Diana Eddington ("Diana") (Mr. Eddington's mother) at the same time on related felony criminal cases. It is undisputed that Mr. Bartlett never discussed the conflict of interest with either Mr. Eddington nor Diana. It is undisputed that Mr. Bartlett never had anyone sign a waiver of the conflict of interest. It is undisputed that Mr. Bartlett refused to permit Diana to testify on her son's behalf due to the conflict of interest. R. 15-19; R. 224-228. It is undisputed that Mr. Bartlett refused to permit Diana to write a a letter in support of her son due to the conflict of interest. R. 16; R. 137; R. 225-226. It is undisputed that Diana's felony charge would not be dismissed until AFTER Mr. Eddington plead guilty. R. 14-19; R. 222-228; R. 136. It is undisputed that Mr. Bartlett forcefully insisted that Mr. Eddington take a plea agreement he was not comfortable with so that Diana's felony charge would be dismissed. R. 24-27.

However, Mr. Bartlett's prioritizing of Diana's claim over Mr. Eddington's best interests did not stop there. Rather, Mr. Bartlett's divided loyalties and conflict of interest even interfered with his putting forth a defense for Mr. Eddington at his sentencing in an effort to avoid

jeopardizing the dismissal of Diana's case. R. 25-27. During the course of the sentencing hearing, Mr. Bartlett objected a total of seven (7) times. Of those objections, four (4) applied directly to the prosecution's mention of Diana Eddington's case. R. 32-44.

As thoroughly discussed in Appellant's Opening Brief, summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the relief requested. If such a factual issue is presented, an evidentiary hearing **must** be conducted. Kelly v. State, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010); DeRushév. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (emphasis added). Id.

Clearly, as evidenced by the undisputed facts, Mr. Bartlett's actual conflict in representing both Mr. Eddington and Diana affected the adequacy of Mr. Bartlett's representation of Mr. Eddington. If the District Court did not want to out right reverse the conviction/sentence based on this uncontroverted evidence, at the very least Mr. Eddington deserved an evidentiary hearing on these issues pursuant to Idaho law.

III. CONCLUSION

Mr. Eddington provided more than enough unrebutted and admissible evidence in support of his claims. Mr. Eddington should be granted summary disposition of his PCRM in his favor. In the alternative, the case should be remanded so that Mr. Eddington can have the evidentiary hearing that he is entitled to pursuant to the law.

RESPECTFULLY SUBMITTED this 7th day of February, 2017.

SMITH HORRAS P.A.

Ellen N. Smith, of the Firm
Attorneys for Appellant, Ronald Eddington

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2017, I caused two true and correct copies of the foregoing APPELLANT'S REPLY BRIEF to be placed in the United States mail, postage prepaid, addressed to:

JOHN C. McKINNEY
DEPUTY ATTORNEY GENERAL
CRIMINAL LAW DIVISION
P.O. BOX 83720
BOISE, IDAHO 83720-0010

Ellen Smith, Attorney for Appellant