UIdaho Law
Digital Commons @ UIdaho Law

Not Reported | Idaho Supreme Court Records & Briefs

10-28-2020

McNeil v. State Appellant's Brief Dckt. 47825

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation
"McNeil v. State Appellant's Brief Dckt. 47825" (2020). *Not Reported*. 6677.
https://digitalcommons.law.uidaho.edu/not_reported/6677

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

Electronically Filed
10/28/2020 11:35 AM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

LLOYD HARDIN MCNEIL,	)	
	)	**NO. 47825-2020**
Petitioner-Appellant,	)	
	)	**ADA COUNTY NO. CV-PC-2014-15680**
v.	)	
	)	
STATE OF IDAHO,	)	**APPELLANT'S BRIEF**
	)	
Respondent.	)	
	)	

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 DEBORAH A. BAIL
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR PETITIONER-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

Lloyd Hardin McNeil appeals from the district court's order denying his Idaho Rule of Civil Procedure 60(b)(6) ("Rule 60(b)(6)") motion for relief from the district court's judgment summarily dismissing his petition for post-conviction relief. He argues the district court abused its discretion by denying his motion. As such, he respectfully requests this Court reverse or vacate the district court's order denying his motion and remand his case for further proceedings.

Statement of Facts and Course of Proceedings

In 2012, a jury found Mr. McNeil guilty of voluntary manslaughter, arson, and grand theft. (*See* No. 39881 R.,[1] pp.256–59.) The district court imposed a total sentence of fifty-four years, with twenty-five years fixed. (No. 39881 R., pp.261–63.) Mr. McNeil appealed, and the Court of Appeals affirmed his judgment of conviction and sentence. *See State v. McNeil*, 155 Idaho 392 (Ct. App. 2013).

In mid-August 2014, Mr. McNeil filed a pro se petition and affidavit for post-conviction relief. (No. 45766 R., pp.7–32.) He raised numerous ineffective assistance of counsel and other constitutional claims. (No. 45766 R., p.8.) In September 2014, the district court appointed counsel to represent him. (No. 45766 R., p.44.) A few days later, conflict counsel provided notice of his appearance as the attorney of record for Mr. McNeil. (No. 45766 R., p.52.)

---

[1] The Court augmented the record in the instant appeal with the record in Mr. McNeil's prior post-conviction appeal: No. 45766-2018. In the prior appeal, the Court had granted Mr. McNeil's motion for judicial notice of certain documents and transcripts in the record from his prior direct appeal: No. 39881 (Ada County No. CR-FE-2011-6449). Citations to certain documents in the record in No. 39881 will refer to the page number of the document in the clerk's record and designate the docket number 39881. Citations to the record in No. 45766-2018 will reference the page number of the document in the clerk's record and designate the docket number 45766.

Throughout the case, Mr. McNeil filed multiple pro se letters and motions. In October 2014, Mr. McNeil wrote a pro se letter to the district court outlining his issues with conflict counsel, asking for his removal from the case, and requesting the appointment of new counsel. (No. 45766 R., pp.54–55.) One month later, Mr. McNeil filed a pro se response to the State's answer because his counsel had not contacted him and did not want his case dismissed "on a technicality." (No. 45766 R., pp.57–60.) Another month later, in December 2014, Mr. McNeil filed a pro se motion to appoint new counsel, again describing his issues with conflict counsel. No. 45766 (R., pp.63–66.) In February 2015, Mr. McNeil filed a second pro se motion to appoint new counsel. (No. 45766 R., pp.71–75.) The next month, in March 2015, Mr. McNeil filed a third pro se motion to appoint new counsel. (No. 45766 R., pp.110–14.) In July 2015, the district court held a hearing on Mr. McNeil's motions for new counsel, and his counsel remained on the case. (No. 45766 R., p.168; *see generally* No. 45766 Tr.) Then, February 2017, Mr. McNeil filed a fourth pro se motion for new counsel and moved for a hearing. (No. 45766 R., pp.289–93.) The district court did not rule on this subsequent motion.

In the meantime, Mr. McNeil's counsel filed an amended petition for post-conviction relief in March 2015 and a second amended petition in October 2015. (No. 45766 R., pp.77–86, 169–87.) The second amended petition raised fifteen claims of ineffective assistance of counsel. (*See* No. 45766 R., pp.169–87.) Eventually, in September 2017, the district court filed a notice of its intent to dismiss. (No. 45766 R., pp.303–27.) Mr. McNeil responded, and the State replied. (No. 45766 R., pp.328–68, 369–78.) In January 2018, the district court issued an order dismissing the petition and issued a final judgment. (No. 45766 R., pp.379–83, 384.) Mr. McNeil timely appealed. (No. 45766 R., pp.385–87.)

During the appeal process, on February 19, 2019, Mr. McNeil filed a pro se Rule 60(b)(6) motion for relief from the district court's judgment and an affidavit in support. (R., pp.9–12, 14–15.) In his motion, he argued his post-conviction counsel provided such inadequate representation to establish unique and compelling circumstances for relief. (R., pp.10–11, 14–15.) In June 2019, he moved for "a change of venue from judge," alleging that the district court had "a personal bias or prejudice against" him. (R., pp.16–17, 19–21.) A couple of months later, he moved for a hearing. (R., pp.22–23.) The district court took no immediate action on the motions. (*See generally* R.)

About eight months after the Rule 60(b)(6) motion's filing, the Court of Appeals issued an opinion that affirmed the district court's summary dismissal of Mr. McNeil's second amended petition. *See McNeil v. State*, No. 45766 (Ct. App. Oct. 8, 2019) (unpublished). Mr. McNeil petitioned for review by the Idaho Supreme Court. *See Petition for Review with New Briefs* and *Brief in Support of Petition for Review*, *McNeil v. State*, No. 45766 (filed Oct. 18, 2019, and Nov. 27, 2019, respectively). About three months after the Court of Appeals' opinion, while the petition for review was pending, the district court denied Mr. McNeil's Rule 60(b)(6) motion. (R., pp.38–40.) The order was filed on January 14, 2020. (R., p.38.) The district court ruled Mr. McNeil's motion was not timely and he did not establish unique and compelling circumstances to warrant relief. (R., pp.39–40.)

On February 24, 2020, Mr. McNeil appealed. (R., pp.42–45.) Shortly thereafter, the Court denied Mr. McNeil's petition for review and issued the remittitur. *See Order Denying Petition for Review* and *Remittitur*, *McNeil v. State*, No. 45766 (Feb. 28, 2020.)

ISSUE

Did the district court abuse its discretion when it denied Mr. McNeil's Rule 60(b)(6) motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. McNeil's Rule 60(b)(6) Motion

A. Introduction

Mr. McNeil argues the district court did not exercise reason and therefore abused its discretion by denying his Rule 60(b)(6) motion for relief from the district court's judgment summarily dismissing his second amended petition for post-conviction relief. He contends the district court did not exercise reason when it ruled he did not file his motion within a reasonable time. He further asserts the district court did not exercise reason when it determined his motion did not present unique and compelling circumstances to justify relief.

B. Standard Of Review

The Court reviews the district court's decision whether to grant relief pursuant to Rule 60(b)(6) for an abuse of discretion. *Eby v. State*, 148 Idaho 731, 734 (2010); *accord Andrus v. State*, 164 Idaho 565, 567 (Ct. App. 2019).

> When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion, acted consistently with any legal standards applicable to the specific choices before it, and reached its decision by an exercise of reason.

Andrus, 164 Idaho at 567 (citing *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018)).

C. The District Court Did Not Exercise Reason When It Denied Mr. McNeil's Rule 60(b)(6) Motion Because He Filed His Motion Within A Reasonable Time And He Established Unique And Compelling Circumstances

Rule 60(b)(6) provides in relevant part: "On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason that justifies relief." I.R.C.P. 60(b)(6). "[A]lthough the court is vested with broad

discretion in determining whether to grant or deny a Rule 60(b) motion, its discretion is limited and may be granted only on a showing of unique and compelling circumstances justifying relief." *Eby*, 148 Idaho at 736 (alteration in original) (internal quotation marks omitted) (quoting *Miller v. Haller*, 129 Idaho 345, 349 (1996)). A Rule 60(b)(6) motion "must be made within a reasonable time." I.R.C.P. 60(c)(1).

In *Eby*, 148 Idaho 731, the Court held a post-conviction petitioner may obtain relief from a judgment pursuant to Rule 60(b)(6) by showing "unique and compelling circumstances." *Id.* at 736. The Court adopted this "limited" ruling as a last resort for post-conviction petitioners. *See id.* at 736–38. Because (a) the Uniform Post-Conviction Procedure Act (UPCPA) was the "exclusive means" to collaterally attack a conviction, (b) there was no right to effective assistance of post-conviction counsel, and (c) successive petitions for ineffective assistance of post-conviction counsel were prohibited, the Court allowed for Rule 60(b)(6) motions to provide a mechanism for relief from "the complete absence of meaningful representation" by post-conviction counsel. *Id.* at 737; *see also Murphy v. State*, 156 Idaho 389, 392–95 (2014) (holding ineffective assistance of post-conviction counsel was not a sufficient basis to file a successive petition for post-conviction relief). In sum, "petitioners have utilized I.R.C.P. 60(b)(6) as a procedural mechanism to challenge the inactivity of counsel to secure meaningful review and development of their post-conviction petition claims." *Andrus v. State*, 164 Idaho 565, 568 (Ct. App. 2019).[2]

---

[2] Mr. McNeil notes the Court's recent decision in *Ward v. State*, 166 Idaho 330, 458 P.3d 199 (2020), which held that the district court did not err in ruling on the petitioner's pro se motion to represent himself because the district court had no obligation to rule on the motion at all. 458 P.3d at 203. The Court reasoned that the civil nature of post-conviction cases required the parties to follow the I.R.C.P. *Id.* at 202. Because the petitioner did not follow the I.R.C.P. with his pro se motion, it was "not effective" to convey his request and "the district court should have refused to entertain" it. *Id.* at 202, 203. Thus, the Court held, because "there was no motion properly before

Here, the district court denied Mr. McNeil's motion on two bases. First, the district court determined Mr. McNeil did not file his motion within a reasonable time. (R., p.39.) Mr. McNeil filed his motion one year and twenty days after the district court's final judgment. (*See* No. 45766 R., pp.379, 384; R., p.9.) The district court reasoned:

> [A] Rule 60(b) motion must be made within a reasonable time. The reasons stated in the motion and declaration were all known immediately after the Court entered its Order dismissing the petition. It was not reasonable to wait over a year to file this motion based on his perceived ineffectiveness of post-conviction counsel.

(R., p.39.) Second, on the merits, the district court determined Mr. McNeil did not present "unique and compelling circumstances" to justify relief. (R., pp.39–40.) The district court explained:

> Even if it had been timely filed, nothing deprived McNeil of his opportunity to petition the court for post-conviction relief. In *Eby* . . . , the Idaho Supreme Court held that Rule 60(b)(6) may provide relief if a petition for

---

the district court to be ruled upon in the first place, the district court's denial of the purported motion has no impact on the propriety of its final decision and judgment dismissing [the] post-conviction petition on the merits." *Id.* at 203.

Mr. McNeil submits the *Ward* holding should be narrowly construed to preclude its application in the Rule 60(b)(6) context. First, *Ward* did not explicitly overrule or reject past decisions by the appellate courts that considered pro se Rule 60(b)(6) motions. *See, e.g.*, *Andrus v. State*, 164 Idaho 565 (Ct. App. 2019); *Devan v. State*, 162 Idaho 520, 522 (Ct. App. 2017); *Bias v. State*, 159 Idaho 696, 700 (Ct. App. 2015). The Court's holding in *Eby* to allow relief for post-conviction judgments under Rule 60(b)(6) struck the proper balance between permitting these filings as a last resort for relief within the UPCPA and requiring careful evaluation of "unique and compelling circumstances." *See Andrus*, 164 Idaho at 569 (discussing these "competing policy concerns" from *Eby*). *Ward*'s holding does not indicate a shift in this balance. Second, the nature of a Rule 60(b)(6) motion—an allegation of "the complete absence of meaningful representation"—should not require counsel's filing or signature. If counsel is completely absent and incapable of providing meaningful representation, it is illogical to require counsel to draft and file a timely Rule 60(b)(6) motion for the petitioner. Third, it is contrary to the Idaho Rules of Professional Conduct (I.R.P.C.) to require counsel to sign and file such motions. A Rule 60(b)(6) motion often alleges glaring ineffective assistance of counsel claims, such as "an apparent complete lack of representation." *Andrus*, 164 Idaho at 570. Because counsel cannot file a motion without a basis in fact, I.R.P.C. 3.1; I.R.C.P. 11(b)(3), counsel would, in essence, be admitting to those allegations of gross ineffectiveness in the Rule 60(b)(6) motion. A requirement for counsel to draft, sign, and file such a motion creates a conflict of interest. I.R.P.C. 1.7(a)(2). All of these reasons support a narrow reading of *Ward*.

> postconviction relief is dismissed pursuant to inactivity under Rule 40(c). In *Eby*, the record showed that while counsel had been appointed, counsel had not performed any work on the case, despite five notices of intent to dismiss the case due to inactivity. In such situation, the Idaho Supreme Court held the "unique and compelling circumstances" may be present because the petitioner had no opportunity to present his ineffective assistance of counsel claims and remanded the case to the district court for determination. However, *Eby* is distinguishable from McNeil's circumstances because his case was summarily dismissed on its merits, not due to inactivity pursuant to [I.R.C.P. 41(e)].[3] Thus, unlike the petitioner in *Eby*, McNeil has had the opportunity to present his ineffective assistance of counsel claims. McNeil has not come forward with any evidence to establish "unique and compelling circumstances" to justify relief pursuant to Rule 60(b)(6).

(R., pp.39–40.) In sum, the district court concluded Mr. McNeil's motion was not only untimely, but also lacking "unique and compelling circumstances." (R., p.40.) Mr. McNeil maintains the district court did not exercise reason in both conclusions.

First, Mr. McNeil filed his motion "within a reasonable time." I.R.C.P. 60(c)(1). The determination of "a reasonable time is ordinarily a question of fact to be resolved by the trier of fact." *Waller v. Idaho Dep't of Health & Welfare*, 146 Idaho 234, 240 (2008); *see also Meyers v. Hansen*, 148 Idaho 283, 291 (2009) (same). The Court has stated that the timeline should be calculated from the movant's notice of the judgment to the filing of the Rule 60(b)(6) motion. *Davis v. Parrish*, 131 Idaho 595, 597 (1998) ("The trial court incorrectly focused on Davis's actions before the quiet title action commenced, her lack of involvement in the property, and her failure to justify the delay in pursuing this action. Instead, it should have focused on Davis's conduct from January 1996, when she had notice of the quiet title decree, to April 1996, when she filed this action. Considering this lapse of time, Davis's suit was brought within a reasonable time."). Here, Mr. McNeil submits filing the motion one year and twenty days after the judgment was reasonable when compared to the one year and forty-two day limit to file an initial petition

[3] The rule for dismissal of inactive cases was previously codified at I.R.C.P. 40(c) (2015).

for post-conviction relief. I.C. § 19-4902(a). Moreover, the time limit to file an initial post-conviction petition is stayed pending the direct appeal of the criminal case, *see* I.C. § 19-4902(a), and Mr. McNeil submits a similar rule should be applied when an appeal is pending from the district court's judgment dismissing the post-conviction petition. A Rule 60(b)(6) motion could be rendered moot by a favorable outcome on appeal. Thus, it promotes judicial economy to factor a pending appeal into the "reasonable time" limitation. In this case, Mr. McNeil filed his Rule 60(b)(6) motion within the time limit to file an initial petition, and he filed it while the appeal was still pending. (No. 45766 R., pp.379–83, 384; R., pp.9–12, 14–15.) *McNeil v. State*, No. 45766 (Ct. App. Oct. 8, 2019) (unpublished). Therefore, although Mr. McNeil does not dispute the district court's finding on his notice of his post-conviction counsel's ineffectiveness prior to the judgment's entry, he nonetheless argues he filed his motion within a reasonable time when viewed in context of the UPCPA standards. The district court did not exercise reason by rejecting his motion on this basis.

Second, Mr. McNeil showed "unique and compelling circumstances" to justify relief. In his motion and declaration, Mr. McNeil alleged his post-conviction counsel's "failure to investigate the trial record, initiate discovery, and set down the facts, together with an ignorance of the relevant case law" deprived him of "any meaningful representation." (R., p.11.) In his declaration, he asserted his counsel "disregarded" or "neglected to consult" on twelve of his fifteen post-conviction claims for ineffective assistance of trial counsel.[4] (R., pp.14–15; *see* No. 45766 R., pp.171–87.) In denying his motion, the district court did not evaluate his assertions of lack of meaningful representation in detail. (R., pp.39–40.) Instead, the district court determined

[4] Consequently, appellate counsel in the post-conviction appeal did not challenge the district court's summary dismissal of these twelve claims. *See McNeil v. State*, No. 45766 (Ct. App. Oct. 8, 2019) (unpublished).

that, unlike *Eby*'s dismissal due to inactivity, Mr. McNeil "had the opportunity to present his ineffective assistance of [trial] counsel claims." (R., p.40.) "[A] petitioner does not need to establish 'years of shocking or disgraceful neglect' as occurred in *Eby* to avail himself of I.R.C.P. 60(b) relief but neither is that relief available where counsel performs some duties such that the claims have been reviewed or counsel participates by pleading or appearance." *Andrus*, 164 Idaho at 569. For example, in *Andrus*, the petitioner's counsel did nothing to review, investigate, amend, or develop the petitioner's claims, and, after no response by counsel, his post-conviction petition was summarily dismissed. *Id.* at 570. Although Mr. McNeil acknowledges his counsel participated in pleadings and appearances, he maintains his counsel failed to provide "meaningful" representation on those twelve claims. (R., pp.10–11, 14–15.) Therefore, he contends the district court did not exercise reason by denying his Rule 60(b)(6) motion on the merits.

CONCLUSION

Mr. McNeil respectfully requests this Court reverse or vacate the district court's order denying his Rule 60(b)(6) motion and remand this case for further proceedings.

DATED this 28th day of October, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October, 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

JCS/eas»