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### Robert Wesley Warden v. State of Idaho Appellant's Brief Dckt. 47831

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

<b>ROBERT WESLEY WARDEN,</b>	)	
	)	<b>NO. 47831-2020</b>
<b>Petitioner-Appellant,</b>	)	
	)	<b>IDAHO COUNTY</b>
<b>v.</b>	)	<b>NO. CV25-19-16</b>
	)	
<b>STATE OF IDAHO,</b>	)	
	)	
<b>Respondent.</b>	)	

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**BRIEF OF APPELLANT**

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

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**HONORABLE GREG FITZMAURICE**  
**District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Robert Warden appeals from the district court's judgment dismissing his petition for post-conviction relief. The district court erred in summarily dismissing Mr. Warden's petition because he raised a genuine issue of material fact as to whether he received ineffective assistance of counsel when his attorney failed to challenge, in a motion to suppress, whether Deputy Aguello had reasonable suspicion to stop Mr. Warden's vehicle.

### Statement of Facts and Course of Proceedings

Mr. Warden was convicted of felony driving under the influence of alcohol in Idaho County Case No. CR-2017-2142, and was sentenced to a unified term of six years, with two-and-a-half years fixed. (R., p.179.) Mr. Warden filed a direct appeal, challenging his sentence as an abuse of discretion, and the Court of Appeals affirmed in an unpublished decision. *See State v. Warden*, No. 46136, 2019 WL 1581659 (Ct. App. April 12, 2019) (unpublished).

Mr. Warden filed a timely pro se petition for post-conviction relief on January 10, 2019. (R., pp.7-11.) He alleged his trial counsel was ineffective for multiple reasons, including: failing to acquire exculpatory evidence; failing to protect his constitutional right to a jury trial; failing to challenge the criminal complaint as constituting perjury; failing to challenge the State's motion to amend the information; failing to object to audio and video evidence at trial; failing to impeach the testimony of Deputy Sam Aguello; failing to investigate when and where the alleged incident occurred; failing to introduce evidence of his illness, which affected his demeanor at the time of his arrest; and failing to object to prosecutorial misconduct. (R., pp.8-9.) Mr. Warden filed a motion for appointment of counsel, which the district court granted. (R., pp.12-14, 19.)

Mr. Warden's appointed counsel filed an amended petition, alleging Mr. Warden received ineffective assistance of counsel because the evidence forming the basis of the charges against him should have been suppressed, and because the probable cause affidavit should have been dismissed.<sup>1</sup> (R., pp.61-78.) The State filed an answer, along with a motion to summarily dismiss the amended petition. (R., pp.102-10, 119-29.) Mr. Warden filed a response to the State's motion to dismiss. (R., pp.137-45.)

The district court held a hearing on the State's motion to dismiss, and considered multiple documents from the underlying criminal case pursuant to a stipulation from the parties. (R., pp.170, 175-79; *see* Exs. A-G.) Following the hearing, the district court issued a written order granting the State's motion and dismissing Mr. Warden's petition for post-conviction relief. (R., pp.179-86.) Mr. Warden filed a timely notice of appeal. (R., pp.191-202.) The district court subsequently entered a final judgment. (R., pp.207-08.)

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<sup>1</sup> Mr. Warden's amended petition did not incorporate the claims alleged in his original petition.

ISSUE

Did the district court err in summarily dismissing Mr. Warden's claim that he received ineffective assistance of counsel when his attorney failed to challenge whether the stop of his vehicle was supported by reasonable suspicion?

## ARGUMENT

### The District Court Erred In Summarily Dismissing Mr. Warden's Claim That He Received Ineffective Assistance Of Counsel When His Attorney Failed To Challenge Whether The Stop Of His Vehicle Was Supported By Reasonable Suspicion

#### A. Introduction

The district court erred in summarily dismissing Mr. Warden's claim that he received ineffective assistance of counsel when his attorney failed to challenge, in a motion to suppress, whether Deputy Aguello had reasonable suspicion to stop Mr. Warden's vehicle. Had his attorney prepared adequately, he would have known there was as a reasonable basis to challenge the stop.

#### B. Standard Of Review

Idaho Code § 19-4906 authorizes summary dismissal of a petition for post-conviction relief if it appears that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Charboneau v. State*, 140 Idaho 789, 792 (2004); *Sheahan v. State*, 146 Idaho 101, 104 (Ct. App. 2008). “[I]f 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.” *Caldwell v. State*, 159 Idaho 233, 237 (Ct. App. 2015) (citations omitted). “If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues.” *Id.* (citations omitted); *see also State v. Payne*, 146 Idaho 548, 561 (2008). “On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief.” *Caldwell*, 159 Idaho at 237 (citations omitted).



C. If Mr. Warden's Attorney Had Prepared Adequately, He Would Have Known There Was A Reasonable Basis To Challenge Whether The Stop Of Mr. Warden's Vehicle Was Supported By Reasonable Suspicion

The right to the effective assistance of counsel in criminal actions is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho Constitution. *Dunlap v. State*, 159 Idaho 280, 295 (2015). To prevail on an ineffective assistance of counsel claim, the petitioner must show the attorney's performance was deficient and that he was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316 (Ct. App. 1995). An attorney's failure to file a motion to suppress (or to argue a particular issue in support of a motion to suppress) can constitute ineffective assistance where it results from inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective review. *See Wurdemann v. State*, 161 Idaho 713, 720-21 (2017); *State v. Payne*, 146 Idaho 548, 561 (2008).

In the present case, had he prepared adequately, Mr. Warden's trial counsel would have known there was a reasonable basis to challenge whether the stop of Mr. Warden's vehicle was supported by reasonable suspicion. Mr. Warden received ineffective assistance of counsel when his attorney failed to challenge the basis for the stop at the suppression hearing. The district court recognized this issue at the hearing on the State's motion, and erred in granting the State's motion and summarily dismissing Mr. Warden's petition for post-conviction relief.

Mr. Warden alleged in his amended petition that he received ineffective assistance of counsel because, among other things, his attorney should have exposed that the entire reason for the stop was unreliable. (R., p.69.) He argued, "If anyone had tried to verify Deputy Augello's assertions regarding where the event occurred, or what it was possible to see, that person would soon learn Deputy Augello was wrong about his presentation of facts." (R., p.70.) He argued that

“[a]side from *not knowing where the event occurred*, Deputy Augello testified to things he saw that he could not have seen, given the speeds of the vehicles, the lighting available, and the placement of the fog line in the curve of the road.” (R., p.72.)

While counsel focused on the impact of Deputy Augello’s testimony at trial, both counsel and the district court recognized the importance of Deputy Augello’s testimony at the suppression hearing. Thus, while the State argued defense counsel’s decision not to focus more on whether there was reasonable suspicion for the stop “did not affect the outcome of the trial,” *see* R., p.127, it *did* affect the outcome of the suppression hearing.

In considering the State’s motion for summary dismissal, the district court recognized the importance of the motion to suppress. Mr. Warden’s counsel did file a motion to suppress, but did not challenge the basis for the stop in that motion. (*See* Exhs., pp.166-82.) The district court noted that defense counsel “only briefly addressed the stop” at the suppression hearing, and that “the majority of [the] hearing addressed the aggravated assault charge against Warden, which was later severed from the DUI charge.” (R., p.184.) The district court specifically asked the prosecutor about the motion to suppress:

Again, let me go back to this, Mr. Jessup, and I know you don’t do a bunch of post-conviction relief. We had a motion to suppress in this matter. Counsel makes citations to the motion to suppress hearing in terms of the testimony of Deputy Augello. Does the failure—and assume just for the fact of argument the failure of the trial counsel . . . to investigate the highway, review the background of the highway, do a better job with reference to the suppression hearing. Is that grounds enough to avoid summarily dismissing the same in this matter?

(Tr., p.10, Ls.9-18.) The district court asked:

Well, isn’t it the most important fact, okay, that whether or not the officer was being honest when he said that there was a cross over the centerline? Isn’t that the most important fact of that hearing? I guess the most important fact is the stated grounds that . . . there was reasonable cause to stop the vehicle, that being the

violation over the yellow line. But isn't that—his credibility the most important thing, because we don't have a video of that, correct?

(Tr., p.25, Ls.6-14.)

Despite asking these targeted questions specific to the suppression motion, the district court concluded Mr. Warden was not entitled to relief on his ineffective assistance of counsel claim because he has not shown “the alleged deficient conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” (R., p.184.) The problem, of course, is that the deficient conduct of Mr. Warden's trial counsel affected the results of the suppression hearing, not the trial. Had counsel prepared properly, and challenged, in the motion to suppress, whether the stop of Mr. Warden's vehicle was supported by reasonable suspicion, he would likely have succeeded. Deputy Augello's credibility would have been the central factor in determining whether the stop was supported by reasonable suspicion, as there was no video recording of the stop. (*See* Tr., p.25, Ls.6-14.) If counsel had shown that Deputy Augello could not have seen what he claimed to see, the district court might reasonably have granted a motion to suppress, finding no basis for the stop.

The probability of success of a motion to suppress may be determinative of both *Strickland* factors—whether the attorney's performance was deficient and whether the petitioner was prejudiced by the deficiency. *See Padilla v. State*, 158 Idaho 184, 190 (Ct. App. 2014). The district court erred in summarily dismissing Mr. Warden's petition in this case because Mr. Warden presented evidence in support of his petition that could reasonably have entitled him to relief at a suppression hearing. (*See* R., pp.79-94.) The district court should have allowed Mr. Warden to proceed to an evidentiary hearing in this case. *See, e.g., Hoffman v. State*, 153 Idaho 898, 903 (Ct. App. 2012) (holding the district court erred in summarily dismissing post-

conviction petition which alleged, among other things, that counsel was ineffective for failing to file motion to suppress regarding the legality of a traffic stop).

CONCLUSION

Mr. Warden respectfully requests that this Court vacate the judgment dismissing his petition for post-conviction relief, and remand this case to the district court for further proceedings.

DATED this 16<sup>th</sup> day of November, 2020.

/s/ Andrea W. Reynolds  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of November, 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](mailto:ecf@ag.idaho.gov)

/s/ Teal M. Vosburgh  
TEAL M. VOSBURGH  
Administrative Assistant

AWR/tmv