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IN THE SUPREME COURT OF THE STATE OF IDAHO

DANIEL JEREMIAH WHITE,)	
)	NO. 47404-2019
Petitioner-Appellant,)	
v.)	TWIN FALLS COUNTY NO. CV42-19-
)	2563
STATE OF IDAHO,)	
)	APPELLANT’S REPLY BRIEF
Respondent.)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

HONORABLE BENJAMIN J. CLUFF
District Judge

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STATEMENT OF THE CASE

Nature of the Case

In his petition for post-conviction relief, Daniel White asserted three claims for relief. The district court promptly issued notice of its intent to dismiss Mr. White's post-conviction petition; however, that notice only addressed one of Mr. White's three claims. After providing Mr. White with twenty days to respond to its notice of intent to dismiss, the district court dismissed Mr. White's petition in its entirety without any further explanation.

Mr. White appeals from the judgment, arguing that summary dismissal of his entire petition was improper. Specifically, he contends the district court erred in dismissing his petition *in toto* where it never gave any advance notice of the reasons for dismissal of two of his three post-conviction claims.

In response, the State argues that "the district court's notice [of intent to dismiss] makes clear . . . all of White's claims were being dismissed as moot because the remedy he sought—a resentencing—had already been provided in the underlying criminal case." (Resp. Br., p.6.)

This Reply Brief is necessary to point out that the State's argument relies on mischaracterizations of both the notice of intent to dismiss in this case, as well as the relief granted to Mr. White in the underlying criminal case.

Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were detailed in Mr. White's Appellant's Brief. They are only discussed here to the extent necessary to respond to the State's arguments.

ISSUE

Did the district court err in summarily dismissing Mr. White's petition for post-conviction relief, where it only provided prior notice of the reasons for dismissal of one of Mr. White's three claims?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. White's Petition For Post-Conviction Relief, Where It Only Provided Prior Notice Of The Reasons For Dismissal Of One Of Mr. White's Three Claims

In response to Mr. White's contention that the district court erred in dismissing his post-conviction in its entirety, given that it only gave notice of the reasons for dismissal of one of the three claims stated therein, the State challenges the notion that Mr. White received notices for the reasons for dismissal of only one of his claims. Specifically, the State argues, "the district court's notice [of intent to dismiss] makes clear . . . all of White's claims were being dismissed as moot because the remedy he sought—a resentencing—had already been provided in the underlying criminal case." (Resp. Br., p.6.) This assertion by the State is false in two respects. First, it mischaracterizes the district court's notice of intent to dismiss. Second, it mischaracterizes the relief obtained in Mr. White's underlying criminal case,

The State's argument turns on a mischaracterization of the district court's one and one-half-page (*see* R., pp.11-12) notice of intent to dismiss. An honest reading of that notice reveals that it was singularly focused on one of Mr. White's three claims for relief—his contention that he received ineffective assistance of counsel insofar as counsel failed to seek correction of his illegal sentence. It described "[t]he basis" for Mr. White's petition as, "that he received ineffective assistance of counsel in his underlying criminal case . . . which resulted in the Court entering an illegal sentence." (R., p.11.) The court then went on to explain the basis for the illegal-sentence claim (*i.e.*, Mr. White was sentenced as a persistent violator, even though he never pled guilty to a persistent violator enhancement), and discussed how the illegal sentence was previously corrected through a Rule 35(a) motion filed in the criminal case. (R., p.11.) The district court then concluded that, "[a]s a result of the Court having granted Petitioner's Rule 35(a) motion, and correcting the underlying judgment . . . , Petitioner's remedy in this matter has

been rendered moot. Accordingly, Petitioner has not stated a claim upon which relief can now be granted.” (R., p.12.) Clearly, the entirety of the district court’s notice was focused on the claim concerning the illegal sentence. It contains nary a mention of Mr. White’s other two claims.

The State’s argument also mischaracterizes the relief Mr. White received in response to his Rule 35(a) motion in the underlying criminal case. In an effort to argue that all three of Mr. White’s claims were mooted by the court’s Rule 35(a) relief, the State describes that relief as “a resentencing.” (Resp. Br., pp.6-7.) That characterization is false, as Mr. White was not resentenced. The district court merely held a short hearing on Mr. White’s Rule 35(a) motion on July 9, 2019, *not a resentencing hearing*. (See Aug., pp.39, 41.)¹ The court minutes from that approximately eleven-minute hearing reveal that counsel for both parties presented arguments on the Rule 35(a) motion and, at the end, the court granted the motion and indicated a corrected judgment would be issued. (Aug., p.41.) The Corrected Judgment of Conviction filed by the district court the very next day states, “Pursuant to Idaho Criminal Rule 35(a), this judgment has been corrected in the following ways: (1) the Court has corrected the previously imposed illegal sentence.” (Aug., p.42.) There is no suggestion anywhere in that corrected judgment that Mr. White had been resentenced. (See Aug., pp.42-46.) Further, the court minutes from the July 9, 2019 hearing reveal none of the hallmarks of a resentencing hearing: Mr. White was not present and obviously could not allocute; no pre-sentence investigation report was discussed or considered; no mitigating or aggravating evidence was proffered; no sentencing

¹ Concurrently with this brief, Mr. White is filing a motion to augment the record with copies of: (1) his Rule 35(a) motion; (2) a notice setting the hearing for that motion on July 9, 2019; (3) the court minutes from the July 9, 2019 hearing; and (4) the district court’s corrected judgment of conviction. These documents were implicitly judicially noticed by the district court in this case. (See R., p.11.)

recommendations were made by either party; no sentence was pronounced; and no notification of rights was provided. (*See Aug.*, p.41.) Indeed, the district court itself made it clear that the July 9, 2019 hearing in the underlying criminal case was nothing more than “a hearing on Petitioner’s Rule 35(a) motion.” (R., p.11.)

Because the hearing in question was not a “resentencing,” it did not moot Mr. White’s remaining post-conviction claims. One of those claims was a claim of ineffective assistance of counsel for counsel’s failure to correct false statements about Mr. White’s military record. (R., pp.5, 9.) That claim could not be mooted by correction of the illegal sentence; it could only be mooted through a true re-sentencing, where the factual record could be corrected and the court could make its sentencing decision anew in light of the corrected record. The other remaining claim concerned false information conveyed to Mr. White by counsel about Veterans Court. (R., pp.6, 9.) Although the precise nature of this claim is unclear (*see App. Br.*, p.2 & n.1), this claim also could not have been mooted by correction of Mr. White’s illegal sentence; it could only be mooted through withdrawal of Mr. White’s guilty plea.

In light of the fact that the State’s appellate arguments rely upon mischaracterizations of the record, they should be rejected. The record in this case is clear: Mr. White never received prior notice of the reasons why two of his three post-conviction claims were to be dismissed. This was error. I.C. § 19-4906(b); *Diamond v. State*, 161 Idaho 636, 642 (Ct. App. 2016); *Murphy v. State*, 143 Idaho 139, 150 (Ct. App. 2006).

CONCLUSION

Because the district court erred in dismissing Mr. White's post-conviction petition in its entirety, he respectfully requests that this Court vacate the district court's judgment and order summarily dismissing his petition, and that it remand the case to the district court for further proceedings.

DATED this 4th day of February, 2021.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2021, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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ERL/eas