2-15-2018

Arellano v. State Appellant's Brief Dckt. 45179

IN THE SUPREME COURT OF THE STATE OF IDAHO

JUAN MANUEL ARELLANO,	)	
	)	**NO. 45179**
Petitioner-Appellant,	)	
	)	**CASSIA COUNTY NO. CV-2013-390**
v.	)	
	)	
STATE OF IDAHO,	)	**APPELLANT'S BRIEF**
	)	
Respondent.	)	
_____	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

HONORABLE MICHAEL R. CRABTREE
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Juan Manuel Arellano appeals from the district court's order denying post-conviction relief. He asserts that the district court erred by denying his petition because he established both deficient performance and prejudice at the evidentiary hearing.

Statement of the Facts and Course of Proceedings

Juan Arellano was charged with the first degree murder of his wife, aggravated battery, and attempted murder, all of which were alleged to be enhanced by the use of a firearm. (41995 R., pp.21-24.)[1] Mr. Arellano reached an agreement with the State wherein he would plead guilty to the first degree murder charge and the associated weapons enhancement and would be free to argue an appropriate sentence, while the State would dismiss the remaining charges and argue for no more than a unified sentence of life, with 22 years fixed. (41995 R., pp.28-53.) However, when it came time to actually placing his guilty plea on the record, Mr. Arellano would not state that the shooting was premeditated or that he acted with malice aforethought, and the parties agreed that Mr. Arellano could enter an *Alford*[2] plea to those specific elements. (41995 R., pp.83-88.) Mr. Arellano was sentenced to a unified term of life, with 22 years fixed, and his sentence was affirmed on appeal. (41995 R., pp.70-73, 89-97, 124-126.)

Mr. Arellano filed a timely verified Petition and Affidavit for Post Conviction Relief, generally asserting that his trial counsel was ineffective in advising him to plead guilty. (41995 R., pp.5-97.) In his petition, Mr. Arellano made the following relevant factual assertions:

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[1] This Court has augmented the record in this case with the record from Mr. Arellano's prior appeal, *Arellano v. State*, Docket No. 41995. (R., p.2.) Citations to the record from prior appeal are cited as 41995 R., while citations to the current record are cited as R.

[2] *North Carolina v. Alford*, 400 U.S. 25 (1970).

29. Petitioner asserts that he lacked the ability to act deliberately and with violence against his wife, and the killing of his wife occurred by accident because of the blind rage upon seeing her come back into the bar after her lover escorted her out.

30. A jury would have been allowed to infer that the requisite mental state was lacking on all the assault charges or he was under the influence of two drugs and the culmination of emotions that his wife intentionally provoked.

. . .

51. No one knows what Petitioner's intent was when he pulled out a gun and walked out onto the dance floor. All petitioner knows is that his emotions overwhelmed him, and [he] wanted to rant and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passion as he was attempting to scare her. He never intended to kill her, but the rage within was so overwhelming that he was out of control and even more by the acts of others.

53. Under the professional norms, counsel's assistance amounted to incompetence. Counsel failed entirely in his representation.

54. Petitioner alleges he committed homicide and attempted assaults with a weapon in the heat of passion upon the appearance of his wife as she intentionally came back to the bar.

55. Counsel's representation was so seriously defective he was not functioning as the counsel guaranteed by the Sixth Amendment.

56. Petitioner asserts that there exist(s) a reasonable probability that but for counsel's representation, he would not have pleaded guilty and would have insisted on going to trial.

57. Counsel's failures prejudice(d) petitioner and if he would have fulfilled his obligations he would never have been convicted of any of the charges filed by information.

58. Petitioner advised his attorney (of) his version of the facts surrounding the death of his wife. Yet counsel insisted that some of those facts were irrelevant, and that if he went to trial he would be found guilty. As a result of counsel refusing to participate in petitioner's defense he entered a guilty plea.

(41995 R., pp.10, 13.) The district court granted Mr. Arellano's motion for to the appointment of counsel. (41995 R., pp.98-101, 111-112.)

The State filed an Answer and a motion for summary dismissal, and brief in support, generally claiming that Mr. Arellano's claims were bare and conclusory, not supported by admissible evidence, or should have been raised on direct appeal, and it requested the district court to dismiss the petition. (41995 R., pp.113-116, 120-141.) Counsel for Mr. Arellano filed an objection to the State's motion for summary dismissal arguing, in part, "Petitioner avers that his counsel advised him that his mental state at the time of the alleged incident was not relevant to the case. This is clearly a significant issue that needs to be explored to determine the validity of the Defendant's entry of his Guilty Plea." (41995 R., p.158 (citation omitted).)

The district court entered an order granting the State's motion for summary disposition. (41995 R., pp.167-184.) Regarding what the court described as Mr. Arellano's claim that trial counsel "advised Mr. Arellano to plead guilty to first degree murder 'when the State would not be able to prove the charge,'" the court found the allegations were bare and conclusory and there was sufficient evidence to convict him of murder, and that Mr. Arellano failed to prove that his trial counsel's advice to plead guilty was deficient "and that he suffered prejudice as a result." (41995 R., pp.170-171.) Mr. Arellano timely appealed from the district court's final Judgment dismissing the petition. (41995 R., pp.185-186, 200-203.)

The Court of Appeals reversed in part. *See Arellano v. State*, 158 Idaho 708 (Ct. App. 2015). The Court of Appeals interpreted assertion 58 to aver that Mr. Arellano informed counsel about his mental state at the time of the offense and that counsel informed him that his mental state was irrelevant. *Id.* at 711. Further, the Court of Appeals concluded that the claim was not conclusory, but rather was supported by admissible evidence. *Id.* at 711-12. The court therefore remanded this claim for an evidentiary hearing. *Id.* at 712.

Following remand, the district court held an evidentiary hearing where both Mr. Arellano and his trial counsel testified. The district court made the following findings of fact that are relevant to this case on appeal: that Mr. Arellano and his wife had a very tumultuous relationship and that, on May 29, 2010, he sent a text message to a mutual friend stating, "I'm going to kill that whore." (R., p.77.)

That evening, Mr. Arellano wen to a bar in Burley and took a handgun with him. (R., p.77.) He stayed at the bar for a period of time before his wife arrived; when she arrived and went onto the dance floor with another man, Mr. Arellano fired a single shot that killed her. (R., p.78.) Mr. Arellano was arrested shortly thereafter and initially told law enforcement that he planned to kill his wife that night. (R., p.78.) Mr. Arellano was charged with first degree murder. (R., p.78.)

Counsel for Mr. Arellano initially believed that the evidence in the case would not support first degree murder and discussed a potential voluntary manslaughter heat of passion defense. (R., p.78.) However, once counsel discovered the existence of the text message, "that changed the calculus because it was going to be hard for us to walk in and argue that he did all of this in the heat of passion, having just sent this text earlier." (R., p.79.)

Counsel explained to Mr. Arellano the effect of the text message to his defense of the case, specifically with regard to voluntary manslaughter. (R., p.79.) However, counsel did not recall discussing the difference between first and second degree murder; counsel testified that the difference "didn't matter to me under the facts of the circumstances at that point because of that text message." (R., p.79.)

Mr. Arellano eventually entered into a plea agreement in which he pleaded guilty to first degree murder with an *Alford* plea to the elements of malice aforethought and premeditation.

(R., p.80.) Mr. Arellano testified at the evidentiary hearing in this case that he did not have an understanding of those elements. (R., p.80.)

In post-hearing briefing, Mr. Arellano asserted that the evidence showed that trial counsel provided ineffective assistance of counsel by failing to advise him as to the elements and application of the facts as they related to second-degree murder and by failing to understand and/or communicate with Mr. Arellano the impact of a potential second-degree murder conviction. (R., p.43.) The district court denied the petition. (R., p.76.) Mr. Arellano appealed. (R., p.90.) He asserts that the district court by denying his petition for post-conviction relief.

ISSUE

Did the district court err when denied Mr. Arellano's petition for post-conviction relief?

ARGUMENT

The District Court Erred When It Denied Mr. Arellano's Petition For Post-Conviction Relief

A. Introduction

Mr. Arellano asserts that he demonstrated both deficient performance and prejudice following the evidentiary hearing and that the district court erred by denying his petition for post-conviction relief.

B. The District Court Erred When It Denied Mr. Arellano's Petition For Post-Conviction Relief

A petition seeking post-conviction relief initiates a separate civil proceeding distinct from the original criminal actions. *See, e.g., Howard v. State*, 126 Idaho 231, 233 (Ct. App. 1994). "In a post-conviction proceeding, the burden is on the applicant to establish the grounds for relief by a preponderance of the evidence." *Id*.

Upon review of a district court's denial of a petition for post-conviction relief when an evidentiary hearing has occurred, Idaho appellate courts will not disturb the district court's factual findings unless they are clearly erroneous. *McKinney v. State*, 133 Idaho 695, 700 (1999); *Russell v. State*, 118 Idaho 65, 67 (Ct. App. 1990). When reviewing mixed questions of law and fact, the appellate court defers to the district court's factual findings supported by substantial evidence, but freely reviews the application of the relevant law to those facts. *Id*., (citing *Young v. State*, 115 Idaho 52, 54 (Ct. App. 1988)).

"A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act." *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002). A petitioner's allegation of ineffective assistance of counsel within a post-conviction petition is

measured by the standards articulated by the U.S. Supreme Court in *Strickland v. Washington*.[3] *See, e.g., State v. Yokovac*, 145 Idaho 437, 444 (2007). The standard involves a two-party inquiry: first, whether the defendant has demonstrated that his counsel tendered deficient performance, meaning that counsel's performance fell below an objective standard of reasonableness; and second, whether there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Id*. In the context of alleged deficiencies of counsel relating to guilty pleas, the specific standard for prejudice is whether, "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Ridgley v. State*, 148 Idaho 671, 676 (2009).

In its order denying post-conviction relief, the court noted that Mr. Arellano's initial claim was that counsel told him that his mental state was irrelevant, but that he "refined" his argument in his post-evidentiary hearing, where he asserted that counsel was ineffective for failing to advise him regarding the difference between first and second degree murder and the elements of second degree murder. (R., p.81.) The court determined that it would address the merits of the claim and not analyze whether this was unpleaded claim or a new claim. (R., p.81.)

Mr. Arellano submits that the claim raised in the post-trial briefing is not a new claim, but rather a refinement of his initial claim: he initially claimed that counsel told him that his mental state was irrelevant, but after the hearing he simply claimed that his counsel did not explain the difference in the mental state required for first or second degree murder. However, even if it is a new claim, the Idaho Supreme Court has explained, "It is clear that a trial court may and is required to grant any relief to a party which the evidence demonstrates a party is entitled to, whether or not such has been specifically requested." *Cady v. Pitts*, 102 Idaho 86, 90 (1981);

[3] *Strickland v. Washington*, 466 U.S. 668 (1984).

accord O'Connor v. Harger Constr., Inc., 145 Idaho 904, 911 (2008); *Child v. Blaser*, 111 Idaho 702, 704 (Ct. App. 1986) ("We also agree that the judge had the authority—even the duty—to grant the relief to which [plaintiffs] were shown to be entitled although they had not demanded such in their pleadings."). Thus, "Every other final judgment [except default judgments] should grant the relief to which the party is entitled, even if the party has not demanded that relief in its pleadings." I.R.C.P. 54(c). Finally, because the district court addressed only the merits of the claim, this Court should as well.

1. Deficient Performance

In this case, the district court held that Mr. Arellano had not demonstrated deficient performance for two reasons: 1) counsel had no duty to advise Mr. Arellano of the lesser offense of second degree murder; and 2) counsel negotiated a plea that allowed Mr. Arellano to maintain his position that he lacked the requisite mental intent. (R., pp.83.84.) Mr. Arellano submits that the district court erred.

First, with regard to the court's conclusion that counsel had no duty to advise of second degree murder, and that Mr. Arellano had cited to no authority to demonstrate otherwise, the district court was incorrect. In this case, Mr. Arellano alleged that he received ineffective assistance of counsel, and the law on ineffective assistant of counsel is clear: when a defendant wishes to plead guilty, defense counsel must determine that the plea is entered voluntarily and knowingly. *Rogers v. Maggio,* 714 F.2d 35 (5th Cir. 1983); *Hill v. Estelle,* 653 F.2d 202 (5th Cir. 1981). Counsel must be familiar with the relevant facts and law so that the client can be advised of the options available. This duty includes the investigation and explanation of potential defenses so that the client may make an informed decision. *Hobbs v. Blackburn*, 752 F.2d 1079, 1083 (5th Cir. 1985). Thus, counsel had a duty to explain that a potential defense to

first degree murder would be that Mr. Arellano lacked premeditation. And counsel did not have this discussion with Mr. Arellano. As the district court found, counsel testified: "whether it was a first degree case, looking at premeditation; second degree case, looking at the intent issue on a potential lesser standard, it didn't matter to me under the fact of the circumstances at that point because of that text message." (R., p.79.)

But it mattered to Mr. Arellano. As the district court found, Mr. Arellano entered a plea to first degree murder with an *Alford* plea as the elements of malice aforethought and premeditation. (R., pp.83-84.) According to the district court, "this plea allowed him to maintain his position that he lacked the requisite mental intent." (R., p.84.) However, Mr. Arellano asserts that, without advice on the difference between first and second degree murder, where he contested the requisite mental intent, his plea was not knowingly and voluntarily made.

Finally, Mr. Arellano notes that he received no benefit from his *Alford* plea to the elements of malice aforethought and premeditation. This is because, "once an *Alford* plea is entered, the court may treat the defendant, for purposes of sentencing, as if he or she were guilty." *State v. Baker*, 153 Idaho 692, 697 (Ct. App. 2012). Therefore, while Mr. Arellano was able to maintain his position with regard to his intent, the district court was free to treat Mr. Arellano as though he admitted to malice aforethought and premeditation.

2. Prejudice

In determining that Mr. Arellano had not demonstrated prejudice, the court concluded that although Mr. Arellano testified at the evidentiary hearing that he did not know his wife would be at the bar on the night in question, the State had other evidence of premeditation and "Mr. Arellano's version of the events does not persuade the court that there was a "real

potential" for a jury to acquit Mr. Arellano on the first degree murder charge and then convicted on the included offense of second degree murder." (R., p.85.) Mr. Arellano asserts that this is not the appropriate standard for establishing prejudice after the recent decision of the United States Supreme Court in *Lee v. United States*, 137 S. Ct. 1958 (2017).

In *Lee*, the Court clarified that "*Hill v. Lockhart*[, 474 U.S. 52 (1985),] focuses on a defendant's decisionmaking, which may not turn solely on the likelihood of conviction after trial." 137 S. Ct. at 1966. The Court explained:

> A defendant without any viable defense will be highly likely to lose at trial. And a defendant facing such long odds will rarely be able to show prejudice from accepting a guilty plea that offers him a better resolution than would be likely after trial. But that is not because the prejudice inquiry in this context looks to the probability of a conviction for its own sake. It is instead because defendants obviously weigh their prospects at trial in deciding whether to accept a plea. See *Hill*, 474 U.S., at 59, 106 S.Ct. 366. Where a defendant has no plausible chance of an acquittal at trial, it is highly likely that he will accept a plea if the Government offers one.
>
> But common sense (not to mention our precedent) recognizes that there is more to consider than simply the likelihood of success at trial. The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. See *INS v. St. Cyr*, 533 U.S. 289, 322–323, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001). When those consequences are, from the defendant's perspective, similarly dire, even the smallest chance of success at trial may look attractive. For example, a defendant with no realistic defense to a charge carrying a 20–year sentence may nevertheless choose trial, if the prosecution's plea offer is 18 years. Here Lee alleges that avoiding deportation was *the* determinative factor for him; deportation after some time in prison was not meaningfully different from deportation after somewhat less time. He says he accordingly would have rejected any plea leading to deportation—even if it shaved off prison time—in favor of throwing a "Hail Mary" at trial.

Id. at 1966-67. The Court noted, "where we are instead asking what an individual defendant would have done, the possibility of even a highly improbable result may be pertinent to the extent it would have affected his decisionmaking." *Id*. at 1967. Mr. Arellano does not contest that there is some evidence of first degree murder in his case. However, even if going to trial on

first degree murder hoping to be convicted of a lesser included offense was a "Hail Mary," Mr. Arellano can demonstrate prejudice if he can establish that a highly improbable result would have affected his decisionmaking. *Id.*

There is abundant evidence in this case that this result affected Mr. Arellano's decision making. The court believed that Mr. Arellano had not established a sufficient causal connection between his attorney's advice, but in its order denying post-conviction relief, the court noted that "Mr. Arellano contends that he would have insisted going to trial because he did not have the intention to kill [his wife.] However, this assertion is not new." (R., p.85.) Thus, the district court recognized that this had been Mr. Arellano's position throughout the criminal case. This is evidenced by the entry of plea transcript, which was admitted into evidence at the evidentiary hearing. (*See* Pl.'s Ex. 104.) This is important because in *Lee*, the Court stated, "courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." 137 S. Ct. at 1967. There is contemporaneous evidence in this case that Mr. Arellano did not want to admit premeditation or malice aforethought.

Mr. Arellano also provided testimony at the evidentiary hearing that supports his claim of prejudice. He testified that he did not understand the terms, premeditation or malice aforethought at the time, and only learned about the difference "because the friend that I had in prison, when he got all the paperwork, I got my paperwork, he read it and he told me what the differences are." (Tr., p.125, Ls.18-20.) Mr. Arellano testified that he wanted to go to trial, and this theory at trial would have been "because I didn't have the intention to kill my wife." (Tr., p.127, Ls.11-13.) Mr. Arellano stated, "I didn't have any intention. I was just looking. I

didn't have the intention to kill her. I didn't know that she was going to be there [at the bar.]" (Tr., p.127, Ls.17-20.) Mr. Arellano submits that he established a sufficient causal connection between the lack of advice as to second degree murder and his decision to plead.

In this case, Mr. Arellano has consistently disputed that he lacked the mental state required for first degree murder, both at the entry of plea hearing and through his testimony at the evidentiary hearing. He clearly testified that he wanted to take his case to trial and contest the evidence of his intent to kill his wife due to the fact that he did not expect her to be at the bar that evening. Mr. Arellano submits that the district court erred by determining that he failed to present evidence of prejudice and that any decision to go to trial would not be rational.

CONCLUSION

Mr. Arellano respectfully requests that this Court vacate the district court's order denying his petition for post-conviction relief.

DATED this 15th day of February, 2018.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of February, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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