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IN THE SUPREME COURT OF THE STATE OF IDAHO

EZEQUIEL ADAN CAMPOS,)	
)	NO. 45591
Petitioner-Appellant,)	
v.)	ADA COUNTY NO. CV01-17-5435
)	
STATE OF IDAHO,)	APPELLANT'S
)	REPLY BRIEF
Respondent.)	
_____)	

REPLY 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 RICHARD D. GREENWOOD
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Ezequiel Campos appeals from the district court's Judgment summarily dismissing his petition for post-conviction relief. Mr. Campos asserts that the district court erred in summarily dismissing his claim that his guilty plea was not knowing, intelligent, and voluntary because his attorney misrepresented the plea agreement. Mr. Campos understood that, as a term of the plea agreement, his sentence would be concurrent. However, the sentence was imposed consecutive to another case. Mr. Campos acknowledges that he was informed by the district court that his sentence could be imposed consecutively. However, he asserts that his attorney told him to "roll with it" and "lie" to the court about his understanding of the agreement because his attorney would correct the issue later. Mr. Campos asserts that he presented an issue of material fact as to whether the plea agreement was misrepresented to him by his attorney and whether the resulting guilty plea was knowing, intelligent, and voluntary. He asserts that an evidentiary hearing had to be held to conduct credibility determinations and, as a result, that the district court erred in summarily dismissing this claim.

This Reply Brief is necessary to address the State's assertions otherwise.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Campos's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err in summarily dismissing Mr. Campos' claim that his guilty plea was coerced by his attorney's misrepresentation of the plea agreement and false promises to correct errors in the terms of the argument at a later date because the claim presents a genuine issue of material fact?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Campos' Claim That His Guilty Plea Was Coerced By His Attorney's Misrepresentation Of The Plea Agreement And False Promises To Correct Errors In The Terms Of The Argument At A Later Date Because The Claim Presents A Genuine Issue Of Material Fact

Mr. Campos asserts that his claim that his plea was not knowing, intelligent, and voluntary due to his attorney's misrepresentation of the plea agreement presented a genuine issue of material fact. Mr. Campos' counsel informed him that the plea agreement would include as a term that his time would be served concurrently. (R., p.124.) When it came to his attention that there was an error in the plea agreement, his attorney advised him to just "agree" at the change of plea hearing and assured him that the issue would be clarified at the sentencing and, later, pursuant to a Rule 35 motion. (R., p.124.) Mr. Campos acknowledged that he had been informed by the district court that his sentence could be consecutive at the change of plea hearing, but that he still believed his sentence would be concurrent and his attorney told him to just "roll with it" and "lie" to the court because it would be corrected later. (Tr., p.9, Ls.7-23, p.12, Ls.15-22; R., p.18.)¹

The State has asserted that the district court did not need to consider Mr. Campos' assertion that his plea was not knowing, intelligent, and voluntary due to his attorney's misrepresentation of the plea agreement because his claim was merely a contradiction of his previous sworn statements. (Respondent's Brief, pp.7-8.) Mr. Campos maintains that the claim in his petition is not merely a contradiction of his prior statements. Mr. Campos admitted that he lied to the district court during the previous hearing. (Tr., p.9, Ls.7-23, p.12, Ls.15-22;

¹ In preparing this Reply Brief, counsel noted a citation error in the Appellant's Brief. On page 11 of the Appellant's Brief, Mr. Campos cited to page 14 of the Record. However, the citation should have been to page 18 of the Record. It appears counsel inadvertently cited page 14 because page 18 of the Record contains page 14 of Mr. Campos' petition.

R., p.18.) As such, the statements in support of his claim were not merely different than what had been previously stated, but the contradiction was explained by Mr. Campos in that he acknowledged he had lied and that his lies were the result of advice of counsel to both “roll with it” and “lie.” (R., p.18.) Due to this explanation of the contradiction, his claim could was not affirmatively disproven. Instead, it presented an issue of material of fact and the district court was required to conduct an evidentiary hearing to determine of whether Mr. Campos’ statements in his petition, contradicting his earlier statements at the change of plea hearing, were credible.

The State has also asserted that, without corroboration, the district court was not required to accept Mr. Campos’ claim that his counsel had misled or lied to him about the plea agreement. (Respondent’s Brief, p.9.) However, the underlying facts alleged by the petitioner “must be regarded as true” for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009). Therefore, Mr. Campos was not required to provide corroboration for his claims, but merely assert his claims and allege facts in support of his claim. He met his duty to do so. If any questions of material fact remain, they must be resolved through an evidentiary hearing. *Small v. State*, 132 Idaho 327, 331 (Ct. App. 1998). In this case, there was a material issue of fact as to whether Mr. Campos was misled about the plea agreement and if he had lied to the district court at the direction of counsel. The only way to resolve these questions was to conduct an evidentiary hearing and make a credibility determination.

Finally, the State has asserted that Mr. Campos could not establish prejudice because even if his counsel mislead him, the district court corrected any potential error by informing Mr. Campos that his sentence could be consecutive. (Respondent’s Brief, pp.9-10.) This

assertion is misguided because despite the district court's statements, Mr. Campos had been told to "roll with it" because the error in the district court's understanding of the plea agreement would be corrected later, either at sentencing or, after sentencing, with a Rule 35 motion. (R., pp.18, 124.) As such, regardless of the district court's statements, Mr. Campos was still left with the erroneous impression that any error would be corrected at a later date.

Mr. Campos maintains that the district court was required to conduct an evidentiary hearing in order to make credibility determinations and ultimately determine whether his guilty plea was knowing, intelligent, and voluntary. Mr. Campos asserts that his case must be remanded for an evidentiary hearing to resolve the issue.

CONCLUSION

Mr. Campos respectfully requests that this Court vacate the district court's order and judgment summarily dismissing his post-conviction petition, and remand his case to the district court for further proceedings.

DATED this 18th day of December, 2018.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2018, I caused a true and correct copy of the foregoing APPELLANT'S REPLY 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

EAA/eas