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IN THE SUPREME COURT OF THE STATE OF IDAHO

GLEN JONES WARD,)	
)	NO. 46265-2018
Petitioner-Appellant,)	
v.)	BONNEVILLE COUNTY
)	NO. CV-2016-3569
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

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

HONORABLE DARREN B. SIMPSON
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
The District Court Abused Its Discretion In Denying Mr. Ward’s Motion To Proceed Pro Se.....	3
A. The District Court Erred In Concluding Mr. Ward’s Motion To Proceed Pro Se Was Moot.....	3
B. The District Court’s Error Of Denying As Moot Mr. Ward’s Motion To Proceed Pro Se Affected His Substantial Rights, As It Denied Him The Opportunity To Present Additional Evidence Or Argument To The District Court In Opposition To The State’s Motion For Summary Dismissal	4
CONCLUSION.....	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

Cases

State v. Manley, 142 Idaho 338 (2005)4

STATEMENT OF THE CASE

Nature of the Case

Mr. Ward appeals from the district court's order and judgment granting the State's motion for summary dismissal, and dismissing his petition for post-conviction relief. He argued in his Appellant's Brief that the district court abused its discretion in denying as moot his motion to proceed pro se. In its Respondent's Brief, the State argues Mr. Ward's motion was moot. Alternatively, the State argues Mr. Ward has failed to show reversible error because he has failed to show prejudice. Mr. Ward submits this Reply Brief to further argue that his motion to proceed pro se was not moot, and that the district court's error in denying that motion requires reversal by this Court.

Statement of Facts and Course of Proceedings

Mr. Ward included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-3.)

ISSUE

Did the district court abuse its discretion in denying Mr. Ward's motion to proceed pro se?

ARGUMENT

The District Court Abused Its Discretion In Denying Mr. Ward's Motion To Proceed Pro Se

A. The District Court Erred In Concluding Mr. Ward's Motion To Proceed Pro Se Was Moot

The State asserts in its Respondent's Brief that "whether Ward represented himself in the trial court or was represented by counsel was not a real and substantial controversy that was capable of being concluded by judicial relief." (Respondent's Br., p.7.) The State appears to believe that Mr. Ward did not seek to present additional evidence or argument in opposition to the State's motion to dismiss, but only wanted to represent himself "for matters following the ruling on the [State's motion for summary dismissal]." (Respondent's Br., p.7.) This is not supported by the record.

Mr. Ward filed a pro se motion in the district court after the hearing on the State's motion for summary dismissal, but before the motion was fully submitted, stating he was invoking his right to self-representation. (R., pp.323-35.) He subsequently filed a supplemental motion with the district court asking the court to enter a written order granting or denying his motion to proceed pro se. (R., pp.366-68.) Mr. Ward did not state, in either his original or supplemental motion, that he wanted to proceed pro se only for a limited purpose. It would have made no sense for Mr. Ward to seek to represent himself on matters apart from the State's motion for summary dismissal if the court was inclined to grant the State's motion, as that would represent the conclusion of the case. Had Mr. Ward intended to represent himself only "for matters following the ruling on the motion [for summary dismissal]," as the State alleges, then Mr. Ward would not have filed his supplemental motion with the district court requesting a written ruling on his motion to proceed pro se prior to the court's ruling on the State's motion for summary dismissal.

The State also asserts the district court correctly concluded the issue was moot because Mr. Ward's motions were improper under the rules of civil procedure. (Respondent's Br., p.8.) Whether a motion is proper under the rules of civil procedure has no bearing on whether an issue raised in a motion is moot. "[A]n issue is moot if a favorable judicial decision would not result in any relief or the party lacks a legally cognizable interest in the outcome." *State v. Manley*, 142 Idaho 338, 343 (2005) (quotation marks and citation omitted). A favorable judicial decision on Mr. Ward's motion to proceed pro se would have resulted in relief—specifically, allowing Mr. Ward to represent himself. While the State might be correct that Mr. Ward did not need permission from the court to represent himself, *see* Respondent's Br., p.6, that makes the district court's error in denying Mr. Ward's motion more, rather than less, erroneous.

B. The District Court's Error Of Denying As Moot Mr. Ward's Motion To Proceed Pro Se Affected His Substantial Rights, As It Denied Him The Opportunity To Present Additional Evidence Or Argument To The District Court In Opposition To The State's Motion For Summary Dismissal

The State asserts Mr. Ward has not argued that he was prejudiced by the district court's error in denying as moot his motion to proceed pro se. (Respondent's Br., p.5.) But the error is that he was not allowed to proceed pro se. Mr. Ward argued in his Appellant's Brief that a post-conviction petitioner should have a right to proceed pro se, just as other natural persons do in civil proceedings. (Appellant's Br., pp.7-8.) The Court need not "search the record" for the alleged prejudice, as the State contends. (Respondent's Br., p.5.)

Mr. Ward appeared telephonically at the hearing on the State's motion for summary dismissal, but apparently had trouble hearing the proceedings. (Tr., p.31, L.8, p.37, Ls.15-20, p.44, L.25.) Mr. Ward's counsel did not zealously represent Mr. Ward at this hearing; instead, he said he was in "a tough situation" and all but conceded that none of Mr. Ward's arguments had

merit. (Tr., p.37, L.22 – p.42, L.19.) Shortly after this hearing, and before the State’s motion for summary dismissal was fully submitted, Mr. Ward filed a pro se motion to proceed pro se, followed by a supplemental motion seeking a ruling from the court. (R., pp.323-25, 366-68.) By denying as moot Mr. Ward’s motion to proceed pro se, the district court prevented Mr. Ward from presenting evidence and argument in opposition to the State’s motion for summary dismissal. Mr. Ward has worked hard to represent his interests throughout this case, and should have been allowed the opportunity to represent himself before the district court mooted his motion by failing to rule on it. Mr. Ward was prejudiced, and is entitled to relief on appeal.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant’s Brief, Mr. Ward respectfully requests that the Court vacate the district court’s judgment, reverse the district court’s order denying his motion to proceed pro se, reverse the district court’s order granting the State’s motion for summary dismissal, and remand this case to the district court for further proceedings.

DATED this 11th day of September, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2019, 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

AWR/eas