

FILED _____

AT _____ O'Clock ____M
CLERK OF THE DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

WILLIAM ARTHUR,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. **CV 2009 105**

**ORDER DENYING RESPONDENT'S
MOTION FOR SUMMARY
DISMISSAL, ORDER
DISMISSING AMENDED PETITION
FOR POST CONVICTION RELIEF,
AND ORDER SCHEDULING
INITIAL PETITION FOR HEARING**

I. PROCEDURAL BACKGROUND.

This matter is before the Court following Petitioner Arthur's filing of Petition for Post-Conviction Relief on January 5, 2009, pursuant to I.C. §19-4901, *et seq.* (Uniform Post-Conviction Procedure Act (UPCPA)). On January 12, 2009, based on Arthur's motion, this Court appointed the Office of the Kootenai County Public Defender to represent Arthur. On January 16, 2009, John Adams, Kootenai County Public Defender withdrew and appointed conflict public defender, Daniel G. Cooper. On January 22, 2009, the State of Idaho filed a Motion for Summary Disposition. Arthur has not responded to that Motion. The State has not noticed that motion for hearing.

On February 13, 2009, Arthur, though counsel, filed a Motion for Enlargement of Time for Filing Ameded [sic] Petition or Notice of Written Adoption of Petition on File. On February 20, 2009, Arthur filed his Amended Petition for Post-Conviction Relief Pursuant to I.C. § 19-4901 *et seq* and I.C.R. Rule 57. Because Arthur has not filed a motion for leave to file an amended petition, this court may summarily dismiss Arthur's

case without considering the substantive arguments raised within the amended petition. *Cole v. State*, 135 Idaho 107, 15 P.3d 820 (2000)

On October 4, 2004, in Kootenai County Case No. CRF 2004 17967, Arthur pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37 (1970), to the felony charge of Grand Theft with Persistent Violator Enhancement. Arthur was sentenced on December 16, 2004, as follows:

Grand Theft, (a felony), Idaho Code § I.C. 18-2403, 18-2407, committed on August 17, 2004 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of LIFE, for a total term not to exceed LIFE. *This includes the habitual enhancement sentence pursuant to I.C. § 19-2514.*

A recommendation was made by the Court for Arthur to participate in the Therapeutic Community program in prison.

In his Post-Conviction Relief Petition, Arthur challenges his conviction on a variety of grounds. The State in its Respondent's Motion for Summary Disposition has asserted 1) Arthur's petition is untimely and should be dismissed pursuant to I.C. § 19-4902, and 2) Arthur's petition alleges no genuine issue of material facts.

II. ANALYSIS.

A. Standard of Review.

Idaho Code § 19-4906 permits for summary disposition of UPCPA petitions pursuant to a party's motion or upon the court's own initiative. *Chouinard v. State*, 127 Idaho 836, 839, 907 P.2d 813, 816 (Ct.App. 1995); *Martinez v. State*, 130 Idaho 530, 532, 944 P.2d 127, 129 (Ct.App. 1997). Summary dismissal is proper only where "the evidence presents no genuine issues of material fact which, if resolved in the applicant's favor, would entitle the applicant to the requested relief." *Martinez*, 130 Idaho 530, 532, 944 P.2d 127, 129. Where genuine issues of material fact are presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159,

1163 (Ct.App. 1991). But, where a petition raises only questions of law, disposition on the pleadings and the record is appropriate. *Daugherty v. State*, 102 Idaho 782, 783, 640 P.2d 1183, 1184 (Ct.App. 1982). “On review of a dismissal of the post-conviction application, without an evidentiary hearing, [reviewing courts] will determine whether a genuine issue of fact exists based on the pleadings, depositions and admission on file, together with any affidavits on file; moreover, the court will liberally construe the facts in favor of the party opposing the motion, together with all reasonable inferences to be drawn from the evidence in favor of the non-moving party.” *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct.App. 1993). Allegations in an application for post-conviction relief must be deemed to be true until those allegations are controverted by the state. *King v. State*, 114 Idaho 442, 445, 757 P.2d 705, 708 (Ct.App. 1988).

The petitioner must be given notice and an opportunity to respond before dismissal of his post-conviction relief petition. Arthur has been given an opportunity to respond, and has not responded.

The ground for summary dismissal must be stated with particularity, or the petitioner has no notice. The State of Idaho must state with particularity the grounds upon which its motion for summary dismissal is sought. If the State of Idaho fails to state its grounds with particularity, then the petitioner is forced to respond to an “invisible target”, when he or she responds to the State’s motion for summary dismissal. *Anderson v. State of Idaho*, 07.23 ICAR 891, 892, 2007 Opinion No. 73A, 2007 WL 3227294 (Nov. 7, 2007).

As stated in that decision:

It is well established that a petitioner is entitled to notice and an opportunity to respond before his petition for post-conviction relief is dismissed. I.C. § 19-4906(b); *Saykhamchone v. State*, 127 Idaho 319, 321, 900 P.2d 795, 797 (1995); *State v. Christensen*, 102 Idaho 487, 488-89, 632 P.2d 676, 677-78 (1981); *Martinez v. State*, 126 Idaho 813, 892 P.2d 488 (Ct.App.1995). If the dismissal is based upon the state's motion for summary dismissal, this requirement is met only if the motion states with particularity the ground on which summary dismissal is sought.

Saykhamchone, 127 Idaho at 322, 900 P.2d at 798; *Christensen*; 102 Idaho at 488-89, 632 P.2d at 677-78. Broad and generic contentions of deficiencies in a petition for post-conviction relief do not suffice. *Franck-Teel*, 143 Idaho at 668-69, 152 P.3d at 29-30. Proper notice must refer to specific allegations in the petition on a claim-by-claim basis, and specifically refer to deficiencies in the evidence or additional legal analysis necessary to avoid summary dismissal of the claim. *Id.* at 668, 152 P.3d at 29. See also *Crabtree v. State*, 144 Idaho 489, 494, 163 P.3d 1201, 1206 (Ct.App.2006).

In this case, the State of Idaho has satisfied those requirements.

B. The Petition Was Timely Filed Pursuant to Idaho Code § 19-4902.

The UPCPA requires applications to be filed within one year from the expiration of the time for general appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. I.C. § 19-4902(a). Here, the State argues it is unaware of Arthur having filed any appeal. If that were the case, the time for appeal would have run forty-two days following the Amended Judgment granting Rule 35 relief in the underlying matter, and the time for filing an application would have expired on July 5, 2006. Respondent's Motion for Summary Disposition, p. 2. Arthur did, however, appeal this Court's decision in CRF 2004 17967 to the Idaho Court of Appeals and to the Idaho Supreme Court. After this Court denied Arthur's request to withdraw his guilty plea, he appealed to the Court of Appeals; after the Court of Appeals affirmed, he appealed to the Supreme Court. The Supreme Court also affirmed. *State of Idaho v. Arthur*, 145 Idaho 219, 221, 177 P.3d 966, 967 (2008) (Affirming the District Court's denial of Petitioner's motion to withdraw guilty plea and granting his Rule 35 motion for reduction of sentence.) *State v. Arthur* was decided on January 29, 2008. *Id.* Thus, Petitioner's application was timely filed on January 5, 2009.

C. Does Petitioner's Application Raise Genuine Issues of Material Fact?

The UPCPA permits summary dismissal upon motion by either party where an application raises no genuine issues of material fact and the moving party is entitled to

judgment as a matter of law. I.C. § 19-4906(c). Here, the State argues the petition contains only conclusory allegations, “many of which go to hindsight opinions and all of which are unsupported by any facts that could be proven at an evidentiary hearing.” Respondent’s Motion for Summary Disposition, p. 3. The State argues Arthur has not alleged facts to meet both prongs of a *Strickland* analysis ((1) that trial counsel’s conduct fell below an objective standard of reasonableness and (2) prejudice resulting from the attorney’s deficient performance) so as to withstand a motion for summary dismissal of his ineffective assistance of counsel claim. *Id.*

Ordinarily, reviewing courts do not address claims of ineffective assistance of counsel on direct appeal because the record on direct appeal is “rarely adequate for review of such claims.” *State v. Hayes*, 138 Idaho 761, 766, 69 P.3d 181, 186 (Ct.App. 2003); *State v. Saxton*, 133 Idaho 546, 549, 989 P.2d 288, 291 (Ct.App. 1999). Claims of ineffective assistance are more appropriately presented through post-conviction relief proceedings where an evidentiary record can be developed. *State v. Mitchell*, 124 Idaho 374, 376, 859 P.2d 972, 974 (Ct.App. 1993).

Arthur alleges several instances of ineffective assistance by Arthur’s trial counsel. However, because the State has failed to notice up its Motion for Summary Disposition, such motion is denied. The matter will be scheduled for an evidentiary hearing.

IT IS HEREBY ORDERED that the State’s Motion for Summary Disposition on the ground that the petition was untimely is DENIED on the merits, all other portions of the State’s Motion for Summary Disposition are denied for failure to notice up for hearing the Motion for Summary Disposition.

IT IS FURTHER ORDERED that due to Arthur's failure to file a motion for leave to amend, this matter will be scheduled for an evidentiary hearing on the issues raised in the initial Petition for Post Conviction Relief filed January 5, 2009.

Dated this 22nd day of May, 2009.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of May, 2009, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Daniel G. Cooper, counsel
for Arthur

Donna Gardner, Deputy Pros.
Attorney

Clerk of the District Court
KOOTENAI COUNTY

By

Deputy