

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41390

VICTOR PAUL BENAVENTE, ) 2015 Unpublished Opinion No. 407  
 )  
 Petitioner-Appellant, ) Filed: March 11, 2015  
 )  
 v. ) Stephen W. Kenyon, Clerk  
 )  
 STATE OF IDAHO, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
 Respondent. ) BE CITED AS AUTHORITY  
 )  
 \_\_\_\_\_ )

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Molly J. Huskey, District Judge.

Judgment of the district court summarily dismissing petition for post-conviction relief, affirmed.

Victor Paul Benavente, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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Before MELANSON, Chief Judge; LANSING, Judge;  
and GUTIERREZ, Judge  
\_\_\_\_\_

PER CURIAM

Victor Paul Benavente appeals pro se from the judgment of the district court summarily dismissing his petition for post-conviction relief. Underlying this post-conviction appeal, Benavente pled guilty to one count of conspiracy to traffic in cocaine, two counts of trafficking in cocaine, and one count of aiding and abetting in the trafficking of cocaine. For each count, the trial court sentenced Benavente to a unified term of twenty-five years, with ten years determinate; in addition, the trial court ordered the sentences be served concurrently. Benavente filed an Idaho Criminal Rule 35 motion, which the trial court denied, and Benavente appealed, arguing that the trial court abused its discretion in the sentences it imposed on him and that the

trial court erred by denying his Rule 35 motion. We affirmed in *State v. Benavente*, Docket No. 39268 (Ct. App. July 25, 2012) (unpublished).

Benavente then filed a pro se petition for post-conviction relief, arguing that defense counsel provided ineffective assistance. After counsel was appointed for Benavente, Benavente filed an affidavit with additional facts in support of his ineffective assistance of counsel claims. The State moved for summary dismissal, and the district court entered a notice of intent to dismiss, which the court later amended. After Benavente filed a response to the amended notice of intent to dismiss, the district court entered an order summarily dismissing Benavente's petition for post-conviction relief.

On appeal, Benavente does not address the grounds upon which the district court summarily dismissed his petition for post-conviction relief. Rather, he argues that the trial court imposed excessive sentences on him. This issue was not raised in the petition below and may not be considered on appeal. *Sanchez v. Arave*, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991) (explaining that, generally, issues not raised below may not be considered for the first time on appeal). Moreover, the principles of res judicata apply when a petitioner attempts to raise the same issue previously ruled upon on direct appeal in a subsequent petition for post-conviction relief. *Knutsen v. State*, 144 Idaho 433, 439, 163 P.3d 222, 228 (Ct. App. 2007). Here, this Court already addressed in the direct appeal the issue of whether the sentences imposed on Benavente were excessive. Accordingly, we affirm the judgment of the district court summarily dismissing Benavente's petition for post-conviction relief.