

SUMMARY STATEMENT

Von Dane Leonard v. State of Idaho

Docket No. 50596

Von Dane Leonard appeals from the district court's final judgment summarily dismissing his amended petition for post-conviction relief. Leonard alleged that his trial counsel was ineffective because he did not file an appeal from the denial of the Idaho Criminal Rule 35 motion or an appeal from the judgment of conviction (second claim). The district court granted partial relief and reentered the denial of the Rule 35 motion so Leonard could appeal from that denial. The district court then held that permitting an appeal from the denial of the Rule 35 motion rendered Leonard's second claim moot because Leonard could challenge his sentence on appeal through the appeal from the denial of the Rule 35. The Court of Appeals held that the district court erred in determining that Leonard's second claim was moot. The Court further held that although the district court erred in granting the State's motion for summary dismissal on the ground that Leonard was not prejudiced, the district court did not err in summarily dismissing the petition.

Leonard asserts the district court erred in summarily dismissing his second claim because he alleged sufficient facts to establish a prima facie claim of ineffective assistance of trial counsel. Leonard argues he sufficiently alleged deficient performance, the first prong of the analysis in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), because his trial counsel failed to consult with him about his right, desire, or intention to appeal the sentence imposed by the district court. Leonard also argues that he reasonably demonstrated to his counsel that he was interested in appealing from his judgment of conviction. The Court of Appeals held that Leonard failed to establish a prima facie showing that he, specifically, or a rational defendant, generally, would have wanted an appeal from his judgment of conviction such that his trial counsel had a duty to consult with him.

For the second prong of the *Strickland* analysis, Leonard argues he sufficiently alleged prejudice because his trial counsel's failure to consult with him regarding an appeal from his sentence "cost Mr. Leonard an appeal that he otherwise would have pursued." Leonard argues this is a sufficient factual allegation that creates a prima facie showing of prejudice. The Court of Appeals held that asserting the legal standard is not a factual showing and, thus, Leonard failed to alleged facts establishing a prima facie showing of prejudice.

Therefore, the Court of Appeals affirmed the district court's judgment and order dismissing Leonard's amended petition for post-conviction relief.

This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.