

**SUMMARY STATEMENT**  
*Tommy T. Tucker v. State of Idaho*  
Docket No. 51877

Tommy T. Tucker appeals from the district court's judgment summarily dismissing his petition for post-conviction relief, arguing the district court erred by using an incorrect standard in declining to appoint counsel and in summarily dismissing his petition. In the underlying criminal proceeding, pursuant to a plea agreement, Tucker pleaded guilty to burglary and possession of methamphetamine and admitted he had violated terms of his probation in three unrelated cases. In exchange for his guilty plea, the State agreed, among other things, to "recommend that any time served in the instant case will run concurrent with time to be imposed" on the probation violations. There was no agreement as to a length of the sentence and the parties both agreed the plea agreement was not binding on the trial court.

The trial court imposed a unified sentence of ten years with four years determinate on the burglary charge, a concurrent unified sentence of five years with four years determinate on the possession charge, and ordered both sentences to run consecutively to the executed sentences in the probation violation cases. Tucker filed an Idaho Criminal Rule 35 motion, which the court denied. Tucker appealed, and this Court affirmed the judgments of conviction and sentences and the order denying Tucker's I.C.R. 35 motion. *State v. Tucker*, Docket No. 49476, (Ct. App. April 5, 2023) (unpublished).

Tucker filed a petition for post-conviction relief and raised multiple claims, only one of which is relevant to the appeal. As to that claim, Tucker asserted: "I would like to withdraw guilty on ground that the prosecution did not uphold the part of Rule 11 plea agreement which was recommend everything run concurrent." Tucker also filed a motion for the appointment of counsel.

The district court denied Tucker's motion for the appointment of counsel and gave notice it would summarily dismiss the petition but gave Tucker the opportunity to respond to the grounds for dismissal.

In response, Tucker filed a motion for the district court to take judicial notice of the underlying criminal proceeding. Tucker also filed an affidavit. Therein, Tucker raised a new claim: that the trial court did not follow the plea agreement. The district court entered a memorandum decision dismissing Tucker's petition for post-conviction relief. The district court considered the new claim and rejected it because the trial court was not bound by the plea

agreement and the issue was addressed on direct appeal; therefore, Tucker could not relitigate an issue already presented to, and resolved by, the Court of Appeals. Tucker appeals.

On appeal, Tucker argues the district court erred in denying his motion for appointment of counsel using the summary dismissal standard and absent a determination of whether Tucker established the possibility of a valid claim or that the claim was frivolous. Tucker also argues the district court erred in dismissing his petition because he established a genuine issue of material fact. The State argues the district court did not err because Tucker's claim was not preserved, but even if preserved, the district court properly denied Tucker's request for counsel and dismissed the petition because Tucker's claim was frivolous.

The Court of Appeals reasoned that the standard regarding the appointment of counsel in post-conviction proceedings had no constitutional, statutory, precedential, or policy basis. First, the Court reiterated that there is no federal or state constitutional right to counsel in post-conviction proceedings. Second, the Court analyzed the language of Idaho Code § 19-4904, the statute governing the appointment of counsel in post-conviction cases, and held it did not require the appointment of counsel in cases where there is the possibility of a valid claim or require a court to determine a claim as frivolous as a prerequisite to declining to appoint counsel. The Court looked to the statutes which first gave rise to the "frivolousness" standard and held those statutes were no longer applicable because they had been amended and the Idaho State Legislature declined to adopt that language into I.C. § 19-4904. Third, the Court traced the relevant caselaw which relied on the prior versions of the amended statutes and held they were no longer valid in light of the amendments. Finally, the Court held that there is no policy basis on which to base the "frivolous standard" language. The Court disavowed any of its prior opinions that held otherwise.

Next, the Court addressed that even if it could consider whether the claims alleged the possibility of a valid claim, the abuse of discretion analytical framework was inapplicable in this context because there were no parameters for that discretion, given that there is no right to counsel in post-conviction proceedings.

The Court also addressed the merits of Tucker's claim using the "possibility of a valid claim" standard, finding first that Tucker's claim was not preserved and second, because Tucker did not allege a genuine issue of material fact on the only claim presented, the claim was frivolous, and the district court did not err in declining to appoint counsel.

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