

SUMMARY STATEMENT

Bell v. State

Docket No. 52104

This appeal addresses the preservation of an argument challenging the summary dismissal of a petition for post-conviction relief. Kevin Keith Bell appeals the district court's denial of his motion to reconsider its summary dismissal of his petition for post-conviction relief. Bell was convicted of rape, witness intimidation, and one count of felony domestic battery. He subsequently filed a pro-se petition for post-conviction relief, alleging three general claims of constitutional error at trial: (1) prosecutorial misconduct; (2) actual innocence; and (3) ineffective assistance of counsel. Through counsel, he later filed an amended petition, which alleged three discrete instances of ineffective assistance of counsel. The amended petition stated that it was "supported by affidavits, filed contemporaneously herewith," as well as Bell's original petition, which was "incorporated herein by reference." The State moved for summary dismissal of Bell's amended petition, which the district court granted.

Bell then filed a motion for reconsideration, arguing the district court erred in summarily dismissing his petition because it did so on the ground that Bell had failed to provide legal argument to support his claims for ineffective assistance of counsel, a ground Bell contended was not raised by the State in its motion to dismiss. The district court denied the motion, concluding that its ground for dismissal—that Bell failed to establish a *prima facie* case of ineffective assistance of counsel—was the same ground as argued by the State.

Bell appealed, arguing the district court erred in denying his motion to reconsider and summarily dismissing his petition in its entirety because it did not provide him twenty days' notice, pursuant to Idaho Code section 19-4906(b), that the additional claims asserted in his original, pro se petition could be summarily dismissed. Bell further contended the district court erred in dismissing his claims for ineffective assistance of counsel because disputed issues of material fact existed regarding his trial counsel's failure to challenge a seated juror who was allegedly biased.

The Idaho Supreme Court affirmed the district court's decision. The Court first held that Bell had failed to preserve his lack of notice challenge to the district court's dismissal of his original claims for post-conviction relief because Bell did not raise this issue before this district court in his motion for reconsideration. The Court emphasized that Bell's legal theory on appeal was inconsistent with the legal theory he relied upon before the district court. The Court further held that the district court did not err in summarily dismissing his claim for ineffective assistance of counsel regarding the allegedly biased juror because Bell did not produce any evidence that the juror was actually biased.

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