

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

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

GEORGE DAN GOODRICK,)
)
 Petitioner,)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Case No. **CV 2017 5328**
**MEMORANDUM DECISION AND
ORDER DENYING PETITIONER'S
MOTION FOR APPOINTMENT OF
COUNSEL AND VACATING
HEARING ON CROSS-MOTIONS
FOR SUMMARY DISPOSITION**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on respondent State of Idaho's (State) and petitioner George Daniel Goodrick's (Goodrick) cross motions for summary disposition.

On March 18, 1992, Goodrick was found guilty of six counts of lewd conduct with a child under the age of sixteen, I.C. § 18-1508, three counts of rape, I.C. § 18-6101, two counts of a crime against nature, I.C. § 18-6605, and one count of aggravated battery, I.C. § 18-907. For those felonies, on May 21, 1992, Goodrick was sentenced to the custody of the Idaho Department of Correction (IDOC) for a fixed term of twenty-five years with an indeterminate life sentence. That same day, he filed a direct appeal from his convictions and/or sentence with the Idaho Supreme Court.¹ The Idaho Supreme Court issued a remittitur on Goodrick's direct appeal on November 18, 1992.

On May 19, 1993, Goodrick filed his first petition for post-conviction relief in CV-

¹ The Idaho Repository shows that Goodrick filed an appeal. However, the details of that appeal are not before the Court.

1993-95856, and on October 22, 1998, he filed a second or successive petition for post-conviction relief in CV-1998-6236. Similarly, Goodrick has filed at least four Writs of Habeas Corpus: CV-1991-87895, CV-1993-457, CV-1993-522, and CV-1997-599, and he has previously litigated a claim or claims against several prison medical providers in federal court.²

On July 10, 2017, Goodrick filed his third petition for post-conviction relief. In support of that petition, Goodrick submitted an affidavit. On July 12, 2017, the State moved for summary disposition and filed an Affidavit of Jamila D. Holmes in Support of Motion for Summary Disposition. On July 31, 2017, Goodrick filed a Response to the State's Motion for Summary Disposition, which in turn, prompted the State to file a Reply.

After all briefing was submitted relative to the State's Motion for Summary Disposition, on August 21, 2017, Goodrick filed a Motion for Appointment of Counsel and an Affidavit of Dan Goodrick in Support of Petitioner's Motion for Appointment of Counsel. It is Goodrick's Motion for Appointment of Counsel that the Court is addressing in this Memorandum Decision and Order. At no time has Goodrick noticed up his Motion for Appointment of Counsel for hearing.

One week later, on August 28, 2017, Goodrick filed Petitioner's Cross-Motion for Summary Disposition. On September 5, 2017, the State filed its Opposition to Petitioner's Cross Motion for Summary Disposition and the Second Affidavit of Jamila D. Holmes in Support of Motion for Summary Disposition. On September 19, 2017, Goodrick filed Petitioner's Reply to Respondent's Opposition to Pettioner's Cross-Motion for Summary Disposition and an Affidavit of Dan Goodrick. At the same time, he filed a Motion to Strike and Disregard Respondent's Exhibits E and F. The State filed the Third

² The unpublished opinion is found at *Goodrick v. French*, 2011 WL 675265 (D. Idaho

Affidavit of Jamila D. Holmes in Support of Motion for Summary Disposition on October 6, 2017. In response to that Affidavit, on October 23, 2017, Goodrick filed an Objection to and Motion to Strike the Third Affidavit of Jamila D. Holmes in Support of Summary Disposition and Attached Exhibit G.

A hearing on the cross-motions for summary disposition was scheduled for November 9, 2017, but is now vacated pursuant to this Memorandum Decision and Order.

II. STANDARD OF REVIEW.

In *Saykhamchone v. State*, 127 Idaho 319, 900 P.2d 795 (1995), the Idaho Supreme Court summarized the standard of review applicable to requests for post-conviction relief as follows:

An application for post-conviction relief is in the nature of a civil proceeding, entirely distinct from the underlying criminal action. *Peltier v. State*, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). The Idaho Rules of Civil Procedure apply. *State v. Goodrich*, 104 Idaho 469, 471, 660 P.2d 934, 936 (1983). If the district court decides to dismiss the application, I.C. § 19-4906(b) requires the court to notify the parties of its intention and give the petitioner an opportunity to respond; failure to do so requires reversal of a judgment denying the application for post-conviction relief. *Peltier v. State*, 119 Idaho 454, 456-57, 808 P.2d 373, 375-76 (1991); *Cherniwchan v. State*, 99 Idaho 128, 578 P.2d 244 (1978). However, under I.C. § 19-4906(c), where a party moves to dismiss the application without a hearing, the twenty-day notice is not required. *Ivey v. State*, 123 Idaho 77, 79, 844 P.2d 706, 708 (1992); *State v. Christensen*, 102 Idaho 487, 488, 632 P.2d 676, 677 (1981).

In determining whether a motion for summary disposition is properly granted, a court must review the facts in a light most favorable to the petitioner, and determine whether they would entitle petitioner to relief if accepted as true. *Ivey*, 123 Idaho at 80, 844 P.2d at 709; *Parrott v. State*, 117 Idaho 272, 274, 787 P.2d 258, 260 (1990). A court is required to accept the petitioner's un rebutted allegations as true, but need not accept the petitioner's conclusions. [*Ivey*, 123 Idaho at 80, 844 P.2d at 709]; *Kraft v. State*, 100 Idaho 671, 674, 603 P.2d 1005, 1008 (1979). The standard to be applied to a trial court's determination that no material issue of fact exists is the same type of determination as in a summary

2011). Aff. Jamila D. Holmes Supp. Summ. Disp. 2, Ex. A.

judgment proceeding. [*Ivey*, 123 Idaho at 80, 844 P.2d at 709]; *State v. Christensen*, 102 Idaho at 489, 632 P.2d at 678.

Id. at 321, 900 P.2d at 797.

The decision to grant or deny a request for post-conviction court-appointed counsel is discretionary. *Hust v. State*, 147 Idaho 682, 683, 214 P.3d 668, 669 (Ct. App. 2009) (citing *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1112 (2004); *Fox v. State*, 129 Idaho 881, 885, 934 P.2d 947, 951 (Ct. App. 1997)). “[C]ounsel should be appointed if the petitioner qualifies financially and alleges facts to raise the possibility of a valid claim.” *Id.* at 684, 214 P.3d at 670. A court may deny the request for counsel only if all the claims in the petition are frivolous. *Id.* “If the court decides that the claims in the petition are frivolous, it should provide sufficient notice regarding the basis for its ruling to enable the petitioner to provide additional facts, if they exist, to demonstrate the existence of a non-frivolous claim.” *Id.*

III. ANALYSIS.

The State seeks summary dismissal of Goodrick’s Petition for Post-Conviction Relief pursuant to Idaho Code §§ 19-4906(b) and (c). In turn, Goodrick seeks summary disposition of his Petition in his favor pursuant to Idaho Code § 19-4906(c). In addition to the cross-motions for summary disposition, Goodrick has requested that the Court appoint post-conviction counsel in this case. The Court begins by addressing Goodrick’s request for court-appointed counsel.

A. Goodrick has not alleged facts that raise the possibility of a valid claim.

A petitioner in a post-conviction proceeding may request appointment of counsel pursuant to Idaho Code § 19-4904. In turn, the district court may appoint counsel to represent the petitioner if the petitioner is unable to pay the costs of representation. I.C. § 19-4904. As mentioned above, the decision to grant or deny a request for post-conviction

court-appointed counsel is discretionary. *Hust v. State*, 147 Idaho 682, 683, 214 P.3d 668, 669 (Ct. App. 2009) (citing *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1112 (2004); *Fox v. State*, 129 Idaho 881, 885, 934 P.2d 947, 951 (Ct. App. 1997)). “[C]ounsel should be appointed if the petitioner qualifies financially and alleges facts to raise the possibility of a valid claim.” *Id.* at 684, 214 P.3d at 670. A court may deny the request for counsel only if all the claims in the petition are frivolous. *Id.* “If the court decides that the claims in the petition are frivolous, it should provide sufficient notice regarding the basis for its ruling to enable the petitioner to provide additional facts, if they exist, to demonstrate the existence of a non-frivolous claim.” *Id.* See also, *Hall v. State*, 156 Idaho 125, 128, 320 P.3d 1284, 1287 (Ct. App. 2014). “In determining whether the appointment of counsel would be appropriate, every inference must run in the petitioner’s favor where the petitioner is unrepresented at that time and cannot be expected to know how to properly allege the necessary facts.” *Melton v. State*, 148 Idaho 339, 342, 223 P.3d 281, 284 (2009). The Idaho Supreme Court has held that it is error for a district court to summarily dismiss a petition for post-conviction relief before ruling on a petitioner’s request for post-conviction counsel. *Shackelford v. State*, 160 Idaho 317, 325, 372 P.3d 372, 380 (2016); *Charboneau*, 140 Idaho at 793, 102 P.3d at 1112.

Here, after all briefing has been submitted on the State’s Motion for Summary Dismissal, Goodrick has requested court-appointed counsel to represent him in this post-conviction matter. Based on the forgoing, the Court recognizes that its decision to grant or deny Goodrick’s request for court-appointed counsel is discretionary. In making that decision, the Court considers two factors: whether Goodrick financially qualifies and whether, in his Petition, Goodrick has alleged facts that raise the possibility of a valid claim.

Due to Goodrick’s incarceration, it’s highly likely he qualifies financially for court-appointed counsel. Turning to the second factor, Goodrick generally asserts that his sentence is illegal and he makes a number of claims in his Petition to support that assertion.

First, Goodrick alleges several errors arising prior to his sentencing. He asserts that the sentencing judge relied on an old pre-sentence investigation, and prior to sentencing, he was not offered a psychosexual exam, mental health evaluation, or “any test to determine his propensity to commit further crimes.” Pet. for Post-Conviction Relief 3, ¶¶ 5-7. These alleged facts, occurring prior to sentencing, are insufficient to raise the possibility of a viable claim because they are untimely,³ they could have been raised on a direct appeal, and Goodrick has not shown why he could not raise these issues in any of his successive petitions. I.C. §§ 19-4901(b), 19-4902(a), 19-4908.

Second, Goodrick contends that the Idaho Department of Corrections failed to meet his treatment needs during his approximately 26 years of incarceration in violation of the American Disabilities Act (ADA), the Eighth Amendment to the U.S. Constitution, and Idaho Code § 20-223. Pet. for Post-Conviction Relief 3–4, ¶¶ 11-13. He claims that IDOC has failed to treat him for his alcoholism and post-traumatic stress disorder, offer him sex offender counseling, treatment, and programming, and provide him with access to a licensed psychiatrist or psychologist. *Id.* He also claims that IDOC has “subjected [him] to cruel and unusual treatment and denied medical treatment for serious medical

³ Idaho Code § 19-4902 provides:

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction took place. An application may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. . . .

needs” *Id.* at 2. The Court concludes that Goodrick’s alleged facts do not give rise to a valid claim because Goodrick does not have a constitutional or statutory right to the treatment he requests while incarcerated. *See State v. Hadley*, 122 Idaho 728, 731, 838 P.2d 331, 334 (Ct. App. 1992) (finding that the Eighth Amendment to the U.S. Constitution does not require treatment for alcoholism);⁴ *see also State v. Gee*, 107 Idaho 991, 695 P.2d 376 (1985) (explaining that Idaho’s purpose in sentencing is punitive, not rehabilitative). To the extent that Goodrick argues that IDOC violated the ADA, the ADA does not provide a prisoner with a remedy for inadequate treatment of a disability. *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1022 (9th Cir. 2010) (explaining that the “ADA prohibits discrimination because of disability, not inadequate treatment for disability”).

Third, Goodrick argues that he was improperly denied parole. Pet. for Post-Conviction Relief 4-7, ¶¶ 14-28. He states that IDOC denied his request for parole because he was ineligible for parole, and he was ineligible for parole because IDOC did not offer him a psychological exam as required by Idaho Code § 20-223(3) [20-223(4)] and “program opportunities” as required by Idaho Code § 20-223(9) [20-223(10)]. *Id.* at 4–5. While such conduct may give rise to a valid claim, Goodrick’s assertion that he was not offered a psychological exam and program opportunities is contradicted by the parole commission’s notes. *See* Second Aff. of Jamila D. Holmes in Supp. of Mot. for Summ.

I.C. § 19-4902(a).

⁴ The *Hadley* court provides a string-cite as follows: *Marshall v. United States*, 414 U.S. 417, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974) (in context of drug addiction, there is no fundamental right to rehabilitation after conviction); *Balla v. Idaho State Board of Corrections*, 869 F.2d 461, 469 (9th Cir. 1989) (no treatment required for sexual offenders); *Hoptowit v. Ray*, 682 F.2d 1237 n. 8 (9th Cir. 1982) (right to rehabilitation may extend to those committed for mental incapacity, but not to those serving criminal sentences); *Pace v. Fauver*, 479 F.Supp. 456 (D.N.J. 1979) (failure or refusal to let state prison inmates establish alcoholism rehabilitation program is not cruel and unusual punishment).

Disposition, Ex. E, Ex. F. The Idaho Commission of Pardons and Parole's summary minutes of Petitioner's March 7, 2016, parole hearing, show that "the Commission reviewed a SORA that was prepared for this hearing." *Id.* at Ex. E, 1. "SORA" is a "Sex Offender Risk Assessment" prepared for use by the Parole Commission pursuant to I.D.A.P.A. 50.01.01.04 a-d. *Id.* at Ex. F, 1. At the end of the March 7, 2016, hearing, the Parole Commission noted that a SORA would be prepared for his next parole hearing in March 2021. *Id.* 3. The Idaho Commission of Pardons and Parole's summary minutes read in pertinent part:

The Commission asked when he became interested in taking the sex offender treatment program and subject said that he has wanted to take it for several years. The commission asked why there is a note in the file in 2012 that he was refusing programming.

Id. 2. Thus, Goodrick's assertion that he was not offered a psychological exam and program opportunities is contradicted by the Parole Commission's notes. This Court does not substitute its judgment for that of the parole commission; this Court's review is limited to whether there is a rational basis for the parole commission's decision. *Vittone v. State*, 114 Idaho 618, 620, 759 P.2d 909, 911 (Ct. App. 1988).

The Court exercises its discretion and denies at this time Goodrick's request to appoint counsel, finding all of Goodrick's claims in his petition are frivolous. *Hust*, 147 Idaho at 684, 214 P.3d at 670; *Hall*, 156 Idaho at 128, 320 P.3d at 1287. The Court is mindful of the requirement in *Hust*, reiterated in *Hall*, that, "If the court decides that the claims in the petition are frivolous, it should provide sufficient notice regarding the basis for its ruling to enable the petitioner to provide additional facts, if they exist, to demonstrate the existence of a non-frivolous claim." *Id.* Accordingly, Goodrick is given until December 15, 2017, to file with the Court, facts demonstrating the existence of a non-frivolous claim. At that time, this Court will reconsider whether Goodrick should be

appointed counsel.

IV. CONCLUSION AND ORDER.

Goodrick has until December 15, 2017, to file facts demonstrating the existence of a non-frivolous claim. At that time, the Court will reconsider whether Goodrick should be appointed counsel.

IT IS HEREBY ORDERED Goodrick's Motion for Appointment of Counsel is DENIED at the present time.

IT IS FURTHER ORDERED Goodrick must file facts demonstrating the existence of a non-frivolous claim by no later than December 15, 2017. At that time, the Court will reconsider Goodrick's Motion for Appointment of Counsel.

IT IS FURTHER ORDERED the hearing on the State's Motion for Summary Disposition scheduled for November 9, 2017, is VACATED and will be reset after the Court decides Goodrick's Motion for Appointment of Counsel.

Entered this 7th day of November, 2017.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of November, 2017, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Pro se</u>	<u>Lawyer</u>	<u>Fax #</u>
George Dan Goodrick, pro se IDOC No. 13304 ISCI, Medical Annex #2 Box 14 Boise, ID 83707	Jamila D. Holmes	208 446-1621

Jeanne Clausen, Deputy Clerk