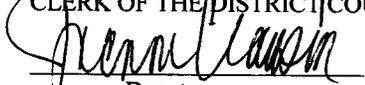


FILED 5/11/18

AT 5:00 O'Clock P. M  
CLERK OF THE DISTRICT COURT

  
Deputy

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

**CHRISTOPHER JAMES SULLIVAN,** )  
 )  
 )  
 *Petitioner,* )  
 )  
 vs. )  
 )  
 **STATE OF IDAHO,** )  
 )  
 )  
 *Respondent.* )  
 )  
 \_\_\_\_\_ )

**Case No. CV 2017 9025**

**ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY  
DISPOSITION, AND ORDER  
DISMISSING PETITION  
FOR POST CONVICTION RELIEF**

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.**

The matter before the Court is respondent State of Idaho's Motion for Summary Disposition of petitioner Christopher James Sullivan's (Sullivan) Petition for Post-Conviction Relief. Sullivan's Petition for Post-Conviction Relief relates to his misdemeanor convictions and sentences in Kootenai County case no. CR-2006-2686 and Kootenai County case no. CR-2006-8061, as well a juvenile conviction and sentence in Bannock County case no. JV-2005-494.

In Kootenai County case no. CR-2006-2686, Sullivan was charged with failing to register as a sex offender in violation of Idaho Code § 18-8307. Aff. Jamila D. Holmes Supp. Summ. Disposition (Holmes Aff.), at Ex. A. The charge was subsequently amended to misdemeanor resisting or obstructing an officer in violation of Idaho Code § 18-705. *Id.* Sullivan pled guilty to the amended charge and was sentenced two years of unsupervised probation. *Id.* Sullivan violated the terms of his probation and, as a result, he was sentenced to 200 days in jail. *Id.* Sullivan completed the terms of his sentence and is no longer on probation or in custody. *Id.*

In Kootenai County case no. CR-2006-8061, Sullivan was charged with failing to register as a sex offender in violation of Idaho Code § 18-8307, possession of a concealed weapon without a license in violation of Idaho Code § 18-3302, and resisting or obstructing an officer in violation of Idaho Code § 18-705. *Id.* at Ex. B. The prosecuting attorney subsequently dismissed the charge against Sullivan for failing to register as a sex offender. *Id.* Sullivan then pled guilty to the misdemeanor charges of carrying a concealed weapon without a license and resisting or obstructing an officer. *Id.* Sullivan was sentenced to two years of supervised probation. *Id.* He is no longer on probation in that case. *Id.*

In Bannock County case no. JV-2005-494, magistrate judge Bryan K. Murray issued an order on October 13, 2017, releasing Sullivan from the obligation and duty to register as a sex offender. Mem. Dec. and Order Granting Pet'r's Mot. Appointment Counsel, at Ex. 4. The order was based on a stipulation between the Bannock County Prosecutor and Sullivan, who was represented by a deputy public defender. *Id.* at Ex. 3. In the stipulation, the parties agreed that Sullivan was “deprived of his constitutional right to due process on July 15, 2004 when he was ordered to register as a sex offender.” *Id.*

On December 1, 2017, Sullivan *pro se* filed a Petition and Affidavit for Post-Conviction Relief (Petition). Sullivan states that his Petition is based on new evidence in the Bannock County case, i.e., the magistrate judge's order that Sullivan is not required to register as a sex offender. Pet. Post Conviction Relief 2. Accordingly, Sullivan seems to argue that because he is not, and was never supposed to be, required to register as an adult sex offender, he is “innocent of any type of failure to register or charge amended from such type of charge.” *Id.* Because he is innocent, Sullivan contends that his convictions in Kootenai County case nos. CR-2006-2686 and CR-2006-8061 “represent false imprisonment.” *Id.* Sullivan asks the Court to remove the criminal history associated with these two Kootenai County cases from his record and he requests an apology from the Kootenai County Prosecutor and Sherriff. *Id.*

Simultaneous to filing his Petition, Sullivan moved for appointment of counsel. After reviewing additional evidence, the Court issued an order granting Sullivan's request for appointment of counsel on January 23, 2018. The Court ordered the Kootenai County Public Defender to represent Sullivan and also ordered appointed counsel, by no later than February 23, 2018, to either file an amended petition, or, a notice that it adopts Sullivan's pro se Petition and Affidavit. On February 21, 2018, conflict public defender Ed Lawlor filed a substitution of counsel on behalf of Sullivan, substituting in for Anne Taylor, Kootenai County Public Defender. Neither the Kootenai County Public Defender nor the conflict public defender filed an amended petition, nor did either file with the Court any notice that they were adopting Sullivan's pro se Petition and Affidavit.

On March 9, 2018, the State filed a Motion for Summary Disposition. In support of its Motion, the State filed the Affidavit of Jamila D. Holmes, Affidavit of Records Custodian (Rebecca Mumford), and Affidavit of Records Custodian (Linda Mattos). The State generally argues that it is entitled to summary disposition of Sullivan's Petition because Sullivan was not convicted of failing to register as a sex offender in the Kootenai County cases, the Bannock County order is not retroactive, and Sullivan's allegations are moot.

Sullivan did not respond to the State's Motion for Summary Disposition. However, on March 28, 2018, counsel for Sullivan filed Plaintiff's Request for Status Conference. The basis for the request for status conference is counsel's inability to contact Sullivan. In that request for status conference, counsel for Sullivan did not request a continuance of the April 30, 2018, hearing on the State's Motion for Summary Disposition

A hearing on the State's Motion for Summary Disposition was held on April 30, 2018. At that hearing, counsel for Sullivan made an oral motion to continue the State's Motion for Summary Disposition. At that hearing, the Court denied Sullivan's motion to continue because, after reading the Respondent's briefing, and because Sullivan had filed no briefing, the Court found that the State's Motion for Summary Disposition was entirely a legal argument, that there were no disputes

of fact involved in that motion. The Court also found there was no need for Sullivan to testify at the hearing on the Motion for Summary Disposition. After hearing oral argument, the Court granted the State's Motion for Summary Disposition, and indicated it would issue an opinion, especially given the fact that Sullivan did not attend the hearing.

## II. STANDARD OF REVIEW.

An application for post-conviction relief initiates a civil proceeding and, thus, the Idaho Rules of Civil Procedure apply. *Saykhamchone v. State*, 127 Idaho 319, 321, 900 P.2d 795, 797 (1995).

Idaho Code Section 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to a motion by a party or upon the court's own initiative, if it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. Moreover, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather, the district court is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. Such inferences will not be disturbed on appeal if the uncontroverted evidence is sufficient to justify them.

Claims may be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. Thus, summary dismissal of a claim for post-conviction relief is appropriate when the court can conclude, as a matter of law, that the petitioner is not entitled to relief even with all disputed facts construed in the petitioner's favor. For this reason, summary dismissal of a post-conviction petition may be appropriate even when the state does not controvert the petitioner's evidence.

Conversely, if the petition, affidavits, and other evidence supporting the petition allege facts that, if true, would entitle the petitioner to relief, the post-conviction claim may not be summarily dismissed. If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues.

*Leytham v. State*, 160 Idaho 764, 768-69, 379 P.3d 354, 358-59 (Ct. App. 2016) (citations omitted).

## III. ANALYSIS.

The State makes three arguments in support of its Motion for Summary Disposition. The Court addresses each argument in the order in which it was presented in the State's Motion.

Regarding summary dismissal, the petitioner must be given notice and an opportunity to respond before dismissal of his post-conviction relief petition. The State of Idaho must state with particularity the grounds upon which its motion for summary dismissal is sought. If the State of Idaho fails to state its grounds with particularity, then the petitioner is forced to respond to an “invisible target”, when he or she responds to the State’s motion for summary dismissal. *Anderson v. State of Idaho*, 07.23 ICAR 891, 892, 2007 Opinion No. 73A, 2007 WL 3227294 (Nov. 7, 2007).

As stated in that decision:

It is well established that a petitioner is entitled to notice and an opportunity to respond before his petition for post-conviction relief is dismissed. I.C. § 19-4906(b); *Saykhamchone v. State*, 127 Idaho 319, 321, 900 P.2d 795, 797 (1995); *State v. Christensen*, 102 Idaho 487, 488-89, 632 P.2d 676, 677-78 (1981); *Martinez v. State*, 126 Idaho 813, 892 P.2d 488 (Ct.App.1995). If the dismissal is based upon the state's motion for summary dismissal, this requirement is met only if the motion states with particularity the ground on which summary dismissal is sought. *Saykhamchone*, 127 Idaho at 322, 900 P.2d at 798; *Christensen*; 102 Idaho at 488-89, 632 P.2d at 677-78. Broad and generic contentions of deficiencies in a petition for post-conviction relief do not suffice. *Franck-Teel*, 143 Idaho at 668-69, 152 P.3d at 29-30. Proper notice must refer to specific allegations in the petition on a claim-by-claim basis, and specifically refer to deficiencies in the evidence or additional legal analysis necessary to avoid summary dismissal of the claim. *Id.* at 668, 152 P.3d at 29. *See also Crabtree v. State*, 144 Idaho 489, 494, 163 P.3d 1201, 1206 (Ct.App.2006).

In this case, the State of Idaho has satisfied those requirements. Each of the three arguments made by the Respondent State of Idaho are stated with particularity.

**A. Sullivan’s innocence claim fails because the undisputed facts demonstrate that he was not convicted and sentenced for failing to register as a sex offender, and there is no factual or legal basis to support an innocence claim with regard to the misdemeanor crimes he pled guilty to and was sentenced for in Kootenai County.**

The State argues that Sullivan is not entitled to post-conviction relief because he was not convicted or sentenced for failing to register as a sex offender in Sullivan’s two Kootenai County cases. Resp’t’s Mot. Summ. Disp. 4–5. The State points out that while Sullivan was initially charged with failing to register as a sex offender in both cases, Sullivan was never convicted or sentenced for that crime. *Id.* Rather, according to the State, Sullivan pled guilty to and was sentenced for resisting or obstructing an officer in Kootenai County case no. CR-2006-2686, and he was sentenced for resisting or obstructing an officer and carrying a concealed weapon without a

license in Kootenai County case no. CR-2006-8061. *Id.* As such, the State contends that there is no basis for granting Sullivan his requested relief, which is premised on the Bannock County order relieving Sullivan from the prospective obligation and duty to register as a sex offender. *Id.* at 5.

The Court agrees with the State. First, the undisputed facts demonstrate that Sullivan was not convicted and sentenced for failing to register as a sex offender. Therefore, Sullivan's claim in his Petition that he is "innocent" of failing to register as a sex offender is immaterial as he was neither convicted nor sentenced for that crime. *See* I.C. § 19-4901 (providing post-conviction relief to a person who has been convicted of or sentenced for a crime).

Second, the undisputed facts show that in Kootenai County case no. CR-2006-2686, Sullivan pled guilty to and was sentenced for resisting or obstructing an officer, a misdemeanor, and in Kootenai County case no. CR-2006-8061, Sullivan pled guilty to and was sentenced for carrying a concealed weapon without a license and resisting or obstructing an officer, both misdemeanors. Sullivan also claims to be "innocent" of these crimes. The basis for his innocence claim appears to be based on the Bannock County order relieving him of his obligation to register as a sex offender. That is, Sullivan seems to suggest that because requiring him to register as an adult sex offender was unlawful (per the Bannock County order), it follows that his arrests for failing to register as an adult sex offender in both Kootenai County cases were also unlawful. Even assuming in hindsight that Sullivan was unlawfully arrested, Sullivan still had a duty to refrain from using force in resisting his allegedly unlawful arrest. *State v. Richardson*, 95 Idaho 446, 451, 511 P.2d 263, 268 (1973) (holding that "if a person has reasonable ground to believe he is being arrested by a peace officer, it is his duty to refrain from using force or any weapon in resisting arrest regardless of whether or not there is a legal basis for the arrest). His failure to refrain from resisting arrest gave rise to the additional charge of and conviction for resisting or obstructing an officer in violation of Idaho Code § 18-705. As such, there is simply no factual or legal basis for Sullivan's claim of innocence as it relates to his convictions and sentences in Kootenai County case no. CR-2006-2686 and Kootenai County case no. CR-2006-8061.

**B. The Bannock County order does not provide a basis for the relief Sullivan requests.**

The State also argues that the Bannock County order cannot be retroactively applied. Resp't's Mot. Summ. Disposition 5–7. According to the State, the plain language of the Bannock County order only relieved Sullivan from the requirement that he register as a sex offender in the future; it did not order expungement of Sullivan's information as permitted by subsection (5) of Idaho Code § 18-8310. *Id.* As such, the State argues that Sullivan is not entitled to the relief he requests because the Bannock County order does provide for such relief. *Id.*

The Court agrees with the State that the Bannock County order only relieves Sullivan from his duty to register as a sex offender going forward. *See* Mem. Dec. and Order Granting Pet'r's Mot. Appointment Counsel, at Ex. 4. The order does not provide for expungement of information related to Sullivan's prior duty register as a sex offender. Even if the order provided for expungement, the Court notes that expungement would likely extend only to the information related to Sullivan's duty to register as a sex offender, and not to the crimes Sullivan ultimately pled guilty to and was sentenced for in both Kootenai County cases.

**C. Sullivan's Petition is moot as Sullivan has failed to show, or even allege, the possibility of collateral legal consequences from his misdemeanor convictions.**

The State further argues that Sullivan's Petition is moot. Rep't's Mot. Summ. Disposition 7–8. The State explains that a case is moot “when the issues presented are no longer live or the defendant lacks a legally cognizable interest in the outcome.” *Id.* at 7 (quoting *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 1183 (1982)). The State reiterates that Sullivan was not convicted or sentenced for failing to register as a sex offender. *Id.* With regard to his misdemeanor convictions and sentences in Kootenai County case nos. CR-2006-2686 and CR-2006-8061, the State notes that Sullivan completed the terms of those sentences. *Id.* Because Sullivan has completed his sentences, the State contends that Sullivan's Petition is moot if “there is no possibility that any collateral consequences could be imposed via the challenged conviction.” *Id.* (quoting *Sibron v. New York*, 392 U.S. 40, 57, 88 S.Ct. 1889, 1900 (1968)). While the State recognizes that collateral legal consequences flow from a felony conviction, the State asserts that “a misdemeanor conviction has

no such collateral legal consequences.” *Id.* at 8. Therefore, the State argues that Sullivan’s Petition is moot because he served his sentence and no collateral legal consequences flow from his misdemeanor convictions.

The Court agrees with the State that Sullivan’s Petition is moot. As noted above, the undisputed evidence demonstrates that Sullivan was not convicted or sentenced for failing to register as a sex offender. The undisputed evidence also shows that Sullivan is no longer in custody or on probation in Kootenai County case no. CR-2006-2686 or Kootenai County case no. CR-2006-8061. Because Sullivan is no longer in custody or on probation in either case, Sullivan’s Petition is moot because a judicial decision in Sullivan’s favor would not result in any relief for Sullivan. *State v. Rogers*, 140 Idaho 223, 226–27, 91 P.3d 1127, 1130–31 (2004) (explaining that an issue is “moot if a favorable judicial decision would not result in any relief”); *see also State v. Snyder*, 88 Idaho 479, 482, 401 P.2d 548, 550 (1965) (“After the satisfaction of a judgment in a criminal case there is nothing on which a judgment of the appellate court can act effectively because there is nothing from which to appeal, and further proceedings are moot.”).

Further, without argument from Sullivan, it seems unlikely that Sullivan’s Petition qualifies for an exception to the mootness doctrine. “[A]n issue is not moot when there is the possibility of collateral legal consequences imposed on the challenger.” *Id.* In *Butler v. State*, 129 Idaho 899, 935 P.2d 162 (1997), the Idaho Supreme Court held that a felony conviction has collateral legal consequences. *Id.* at 901, 935 P.2d at 164. However, in this case, Sullivan’s underlying convictions were for misdemeanors, not felonies. It appears that Idaho appellate courts have not considered whether collateral legal consequences might flow from a misdemeanor conviction such that an otherwise moot issue is rendered not moot. Other jurisdictions have held that collateral legal consequences may arise from a misdemeanor conviction where the defendant shows “some legal disability or loss of civil rights stemming from that conviction.” *State v. Golston*, 71 Ohio St. 3d 224, 226, 643 N.E.2d 109, 110 (1994) (citing *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236 (1975), and *State v. Berndt*, 29 Ohio St.3d 3, 504 N.E.2d 712 (1987)); *see also Ex parte Rinkevich*,

222 S.W.3d 900, 902–03 (Texas Ct. App. 2007) (“A defendant convicted of a misdemeanor offense may attack the validity of the conviction by way of habeas corpus if he is either (i) confined or restrained as a result of a misdemeanor charge or conviction or (ii) is no longer confined, but is subject to collateral legal consequences resulting from the conviction.”); *Cordle v. Woody*, 350 F. Supp. 479 (D.C. Va. 1972) (finding an issue not moot where a misdemeanor conviction may impact a prisoner’s parole eligibility). While persuasive authority suggests that collateral legal consequences may flow from a misdemeanor conviction, the same authority requires the person challenging the misdemeanor conviction to at least allege or identify a collateral legal consequence. In this case, Sullivan has not provided the Court with any argument or explanation as to how his misdemeanor convictions might lead to some legal disability or loss of civil rights. As a result, because Sullivan is no longer in custody or on probation in either case and because he has failed to show a collateral legal consequence, the Court concludes that the issue presented in Sullivan’s Petition is moot.

#### IV. CONCLUSION AND ORDER.

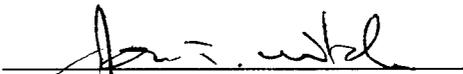
Based on the above analysis, the Court grants the State’s Motion for Summary Disposition.

**IT IS HEREBY ORDERED** that the Respondent State of Idaho’s Motion for Summary Dismissal is **GRANTED**, counsel for Respondent to prepare an appropriate Judgment.

**IT IS FURTHER ORDERED** Petitioner’s Petition for Post Conviction Relief be and the same hereby is **DISMISSED**.

**IT IS FURTHER ORDERED** Petitioner’s Motion to Continue is **DENIED**.

Dated this 1<sup>st</sup> day of May, 2018.

  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**  
I hereby certify that on the 4 day of May, 2018, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:  
Jamila Holmes *jdholmes@kcgov.us*  
Ed Lawlor *Edward@lawlorlawoffice.com* 10:11am

Clerk of the District Court  
KOOKENAI COUNTY  
By   
Deputy