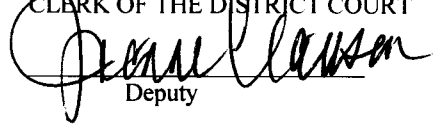


STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 1/7/2020

AT 11:40 O'Clock a 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**

MANUEL GOMEZ,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
)

Case No. **CV28-18-9713**

**ORDER DISMISSING PETITION FOR
POST-CONVICTION RELIEF AS TO
CLAIM OF RACIAL BIAS**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On December 20, 2018, Petitioner Manuel Gomez (Gomez) filed this civil case, CV28-18-9713, his *pro se* Petition for Post-Conviction Relief. This case was originally assigned to Judge Haynes, but on October 3, 2019, Judge Haynes entered his order of Voluntary Disqualification under I.R.C.P. 40(c). This case was re-assigned to the undersigned District Judge.

On June 25, 2018, Gomez was sentenced by Judge Haynes in criminal case CR2017-19233, to two years fixed, five years indeterminate, total of seven years, for the felony crime of Enticing Children, I.C. §18-1509. That crime carries with it a potential prison sentence of fifteen (15) years. In that case, before Gomez pled guilty, he had entered into a pre-trial settlement offer where he, his attorney, and the deputy Kootenai County Prosecuting Attorney representing the State of Idaho, agreed that at sentencing, the prosecuting attorney would recommend no more than a fixed three

year sentence. At the June 25, 2018, sentencing hearing, the deputy prosecuting attorney abided by that agreement.

In his civil case, Gomez requested counsel represent him at public expense. On December 18, 2018, the Kootenai County Public Defender was appointed to represent Gomez in this Post-Conviction case. On January 18, 2019, the Respondent State of Idaho (State) filed its Answer. On January 28, 2019, Judge Haynes entered an order granting Gomez' motion enlarging time to file an amended petition for post-conviction relief, and he did so without a hearing. On February 6, 2019, Judge Haynes entered an order for the preparation of the transcript. On April 10, 2019, the transcripts were filed. On May 9, 2019, Gomez, through counsel, filed an Amended Verified Petition for Post-Conviction Relief. Gomez alleged a) his plea was entered illegally as Count I failed to allege Gomez was over the age of 18 at the time he committed the crime, that the information alleged attempt language, and that the sentencing judge was racially biased, b) a polygraph evaluation was not adequately relied upon by defense counsel at sentencing, c) no appeal was filed. Am. Pet. for Post-Conviction Relief 1-4. On July 15, 2019, the State filed Respondent's Motion for Summary Disposition, an Affidavit of Jamila D. Holmes in Support of Motion for Summary Disposition, and an Affidavit of Jason Johnson. Jason Johnson was Gomez' private attorney for the underlying criminal case and represented Gomez at the arraignment hearing, at the plea change hearing and at the sentencing hearing. On July 26, 2019, Gomez filed an Affidavit of Manuel Javier Gomez in Support of Response to Motion for Summary Disposition, an Affidavit of Adrien L. Fox in Support of Response to Motion for Summary Disposition (Adrien Fox is Gomez' court appointed attorney in this civil Post-Conviction case), an Affidavit of Melanie Gomez, an Affidavit of Yoland Flanik, a Pre-trial Compliance Setting Forth Disputed Material Facts, and a Response to Respondent's Motion for Summary Dismissal. On July 30, 2019, Gomez filed a

Second Supplemental Affidavit of Adrien L. Fox in Support of Response to Motion for Summary Disposition. On August 1, 2019, Gomez filed a First Supplemental Affidavit of Adrien L. Fox in Support of Response to Motion for Summary Disposition. On August 5, 2019, the State filed its Respondent's Reply in Support of Motion for Summary Disposition, a Second Affidavit of Jamila D. Holmes in Support of Motion for Summary Disposition, and a Second Affidavit of Jason Johnson. On August 9, 2019, Gomez filed a Third Supplemental Affidavit of Adrien L. Fox in Support of Response to Motion for Summary Disposition. On August 12, 2019, Judge Haynes heard oral argument on the State's Motion for Summary Disposition. Gomez appeared telephonically. At the conclusion of that August 12, 2019, hearing, Judge Haynes stated he would get a written decision out quickly. On September 20, 2019, Judge Haynes gave his oral findings to the attorneys, and Gomez participated telephonically in that hearing. Judge Haynes stated the claims of racial bias would not be addressed by him, and that he would disqualify himself after issuing his written decision to let a different judge address that issue. Judge Haynes indicated he would grant summary dismissal on all other issues except the alleged failure of Gomez' defense counsel to file an appeal. On October 3, 2019, the Memorandum Decision and Order Re: Respondent's Motion for Summary Dismissal was filed. That decision was consistent with what Judge Haynes stated on the record on September 20, 2019. Also on October 3, 2019, Judge Haynes voluntarily disqualified himself from this case. On October 4, 2019, this case was assigned to the undersigned. On January 6, 2020, this Court held a Status Conference, the Court asked counsel for Gomez and counsel for the State if an evidentiary hearing was necessary for the issues remaining for this Court, and if so, when should such hearing be held. Gomez participated in that hearing telephonically. Counsel for Gomez stated an evidentiary hearing should be held on the failure to file a notice of appeal, but agreed that the issue of racial bias could be decided by this

Court based on the present record. Counsel for the State agreed, and the Court announced that the issue of racial bias would be taken under advisement at that time. At that hearing, this Court scheduled a hearing for March 4, 2020, on the Gomez' claim of failure of defense counsel to file an appeal.

II. ANALYSIS.

The Court has reviewed the transcript of January 11, 2018, arraignment hearing. Judge Haynes was at all times courteous during that entire hearing. There is no evidence of any racial bias that occurred during that hearing.

The Court has reviewed the transcript of March 22, 2018, change of plea hearing. Judge Haynes was at all times courteous during that entire hearing. The Court has reviewed the transcript of March 22, 2018, change of plea hearing. Judge Haynes was at all times courteous during that entire hearing. There is absolutely no evidence of racial bias. Judge Haynes asked Gomez if he had any trouble reading or understanding the English language (to which Gomez responded "no"(Tr. 8; 16-19), but that is a mandatory question and must be asked. It certainly is not racially motivated. Likewise, Gomez was given the mandatory warning that applies if Gomez was not a United States citizen (Tr. 9; 6-13), but again that is mandatory and no racial bias occurs as a result of that warning. At all times during this hearing, Judge Haynes was cordial and polite with Gomez. There is no evidence of racial bias from this hearing.

The Court notes that sentencing occurred June 25, 2018, however, there is no transcript which has been filed in this post-conviction relief case. There is a transcript of that June 25, 2018, hearing filed in the criminal case. The Court finds that such transcript was misfiled in the criminal case, and instead should have been filed in Gomez' post-conviction relief case.

The Court has reviewed the transcript of the July 20, 2018, on Gomez' I.C.R. 35 Motion. While Judge Haynes denied that motion, he told Gomez "I think it was appropriate for you to bring this motion. I understand why you wanted to make another argument and it wasn't just reiterating your last argument." Tr. 7; 5-8.

Gomez' basis for the racial bias seems to be as follows. In his December 20, 2018, Petition for Post-Conviction Relief, Gomez states, "I am not sure if my name had anything to do with the judge's final sentencing judgment." Pet. for Post-Conviction Relief 2. In his Amended Verified Petition for Post-Conviction Relief, filed on May 9, 2019, Gomez states, "Petitioner also alleges that the sentencing court had racial bias and prejudice against him that improperly influenced the sentence in his case in violation of his due process rights." Am. Verified Pet. for Post-Conviction Relief, 2. The Affidavit of Manuel Javier Gomez says the following.

During the time I was in court for arraignment, change of plea and sentence, I had opportunity to watch the court conduct business with other defendants. During these hearings I perceived the court to look at me-the only Hispanic/Latino male-with disdain. During these hearings I also perceived the court to speak my Hispanic name, Manuel Javier Gomez with disgust when calling case. The court's demeanor and facial expressions changed to those of antagonism and loathing when calling and handling my case. The court was otherwise respectful and polite when handling and calling other cases on the docket.

Aff. of Manuel Javier Gomez 1, ¶ 3. The exact same language is found in the Affidavit of Manuel Javier Gomez in Support of Response to Motion for Summary Disposition 1, ¶ 3, filed on July 26, 2019. Melanie Gomez, Gomez' mother, signed an affidavit, in it she states:

4. I was present in court for the hearing when Jason Johnson asked to continue the sentencing.
5. At this hearing to postpone sentencing, the first thing out of the Judges [sic] mouth that was offensive and odd, was the way he said: pronouncing it Manwell Gomez, with such emphasis and the Manwell, no one ever says Manuel that way, even in Mexico, They call him Manuel or Manny.
6. At this hearing to postpone sentencing I watched the Judges (sic) face and his slight grins and smirks in calling and dealing with Manuel's case. I did not see occur as he was handling other (sic) cases.

Aff. of Melanie Gomez 1-2, ¶¶ 4-6. On May 22, 2018, sentencing was originally scheduled before Judge Haynes. The minutes of that hearing show that hearing lasted six and one half minutes. There is no transcript of that hearing in the Post-Conviction case. There is no transcript of that hearing in the criminal case. The Court listened to the digital recording of that case. As Judge Haynes called the case, he quickly said Manuel (pronounced Manwell) Javier (pronounced Havier) Gomez. That was the only occasion Judge Haynes even said the name “Manuel”, after that it was always Mr. Gomez.

Gomez’ sister Yolanda Flanik signed an affidavit. In that affidavit she states:

4. At sentencing the Judge pronounced my Brothers name ManWell Gomez so strong and no one in Mexico even says it this way.

Aff. of Yolanda Flanik 1, ¶ 4. Sentencing occurred June 25, 2019. There is no transcript of the June 25, 2019, sentencing hearing filed in this post-conviction case. However, there is a transcript of the June 25, 2019, hearing filed in the criminal case. The Court has reviewed that transcript. Nothing racial was stated by the sentencing judge. The Court has listened to the digital recording of the sentencing hearing. At the beginning of that hearing, Judge Haynes called the case and pronounced Gomez’ full name similar to the prior hearing, as Manuel (pronounced Manwell) Javier (pronounced Havier) Gomez.

Gomez is basing his claim of racial bias on the way that Judge Haynes pronounced his first name. This Court on Post-Conviction review notes that at no time did Gomez ever once correct Judge Haynes’ pronunciation of his first name.

Further, the Court has listened to the two hearings referenced by Gomez’ mother and sister. The fact that Judge Haynes pronounces Manuel as ManWell is of no significance as that is a

legitimate pronunciation of that name. Had Manuel taken offense at that pronunciation, he, or his attorney could have set Judge Haynes straight.

Manwell is one correct pronunciation of that name, so is Man-U-ell, so would be Manual (like owner's manual). I suppose there are others. What is absolutely amazing to this Court is that neither Gomez, nor his sister nor his mother, ever tell this reviewing Court what they think is the correct pronunciation of Manuel! This Court is left with the fact that even if Judge Haynes mispronounced Manuel, at least according to Gomez' preferences and the preferences of some of his family members, no one ever corrected Judge Haynes, and now, on review, not one single person has informed this reviewing Court what the correct or preferred pronunciation might be. The claim that Judge Haynes was racially biased due to the pronunciation of his first name on one occasion at the beginning of some hearings is one of the most absurd propositions ever presented to this Court.

Gomez' mother claims there were grins or smirks observed as Judge Haynes was calling the case. This Court finds such claim to be not credible. On both digital audio recordings reviewed by this Court, the case was called incredibly fast, as we all must do in this district due to the calendar; so fast that there is not time for a grin or a smirk as you are simply talking too fast. Finally, because there is no video recording of these proceedings, there is no actual evidence to support Gomez' mother's claims.

Gomez claims "I perceived the court to look at me-the only Hispanic/Latino male-with distain." *Aff. of Manuel Javier Gomez* 1, ¶ 3. ("Distain" means "dishonor", WEBSTER'S NEW COLLEGE DICTIONARY, 367, 9th ed. 1983; "disdain" means "a feeling of contempt for what is beneath one; scorn", *Id.* at 362. This Court assumes Gomez meant "disdain.") Again, because there is no video recording of these proceedings, there is no actual evidence to support Gomez' claims.

And, even if there were a look of disdain, there is absolutely no evidence that such a “look” was due to racial prejudice. The “look” of “disdain” testified to by Gomez in his affidavit is an unsupported, conclusory opinion, entirely without foundation. Observing a “look” and categorizing it is inherently an individual process. Thus, this is Gomez’ opinion alone, and Gomez’ opinion is completely devoid of any basis. If indeed there were a look of disdain, it is much more likely due to the nature of the crime to which Gomez pled guilty. At sentencing, Gomez himself admitted what he did was “disgusting.” Tr. 26; 1-2. Gomez responded to a Craig’s List ad for family play, having sex with the child and her mother. Tr. 27; 8-12. In the call to the undercover officer, Gomez said “The fact that she is 13 makes me want her more.” *Id.* at 24-25. Judge Haynes found:

[T]here is no other inference that any reasonable person can draw other than that you were absolutely interested in meeting this 13-year-old girl for the purpose of sexual relations with her.

You were adamant and insistent and explicit about your undisguised intention to be sexually active with this child. Your statements in the PSI that, you know, you knew this was wrong, and you would never really do it, and mostly you were just trying to meet the mom and talk in a provocative way to meet the mom, I just don’t think anybody that reads these texts would ever believe that.

Tr. 42; 10-21. If Gomez was correct that he witnessed a “look” of “distain” (or disdain) upon Judge Haynes, that is understandable. What is not understandable and what is not supported by any evidence, is that such “look” would be due to Gomez’ race. Any human being confronted with the facts of this case, might form a look of disdain upon their face.

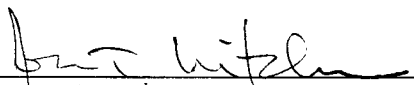
No racial bias has been demonstrated by any of these claims by Gomez, his mother or his sister. And that is all we are left with, “claims”; because there is no “evidence” other than conclusory allegations in affidavits. As pointed out correctly by counsel for the State, conclusory allegations, unsubstantiated by any fact, “without supporting affidavits based upon otherwise verifiable information, cannot be a basis for post-conviction relief.” *Nguyen v. State*, 126 Idaho 494, 497, 887 P.2d 39, 42 (Ct. App. 1994); Resp’t’s Mot. for Summ. Disposition 5.

III. CONCLUSION AND ORDER.

The petitioner Gomez has failed to present any admissible evidence on the issue of racial bias. Post-conviction relief on that ground is dismissed.

IT IS ORDERED that the petitioner Gomez' claim for Post-Conviction Relief on the ground of racial bias is **DISMISSED**.

Dated this 7th day of January, 2020.

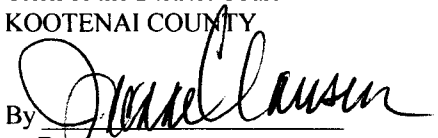

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 7 day of January, 2020, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Adrian Fox
pdfox@kcpv.us

Jamila Holmes
klegal@kcpv.us

Clerk of the District Court
KOOTENAI COUNTY
By 
Deputy