

LLOYD HARDIN MCNEIL
IDOC No. 103513
C-Block
Eagle Pass Correctional Facility
410 S. Bibb Ave.
P.O. Box 849
Eagle Pass, Texas 78853

Petitioner, pro se

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LLOYD HARDIN MCNEIL,)	
)	
Petitioner,)	Case No. CV PC 2014-15680
)	
v.)	MOTION AND DECLARATION IN
)	SUPPORT FOR RELIEF FROM
STATE OF IDAHO)	JUDGMENT (IRCP 60(b)(6))
)	
Respondent)	
)	
)	
)	

COMES NOW the Petitioner/Movant, Lloyd Hardin McNeil, pro se, and prays this court relieve him of the final judgment in the above-styled action pursuant to the authority of Idaho Rule of Civil Procedure 60(b)(6). In support, Petitioner would state as follows:

1. I am the Petitioner (hereinafter “McNeil”) in the foregoing post-conviction action.

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2. McNeil is currently incarcerated at Eagle Pass Correctional Facility, Maverick County, Texas, by authority of the Idaho Department of Correction, and under the direct care, custody and control of Waymon Barry, warden, pursuant to Idaho Code, Title 20.

3. On August 15, 2014, McNeil filed an Application for Post-Conviction Relief (“PCR”) in this court—Case No. CV PC 2014-15680—pursuant to I.C. § 49-4901.

4. This court appoint attorney John C. DeFranco as post-conviction counsel to McNeil.

5. From the get, McNeil’s PCR application nearly lay dormant, languishing over one-thousand two-hundred days with little-to-no attention paid by the court, or appointed conflict counsel [selected by Respondent’s hand], which left McNeil absent meaningful representation in pursuing his interests.

6. In July 2015, the court dismissed McNeil’s urging to assign substitute PCR counsel after he complained that his appointed counsel had submitted only a cursory [shell] application in lieu of a thoroughly reviewed, developed, investigated, and duly amended petition for post-conviction relief.

7. Where counsel has been appointed, it is error to dismiss claims on the merits when there exists an allegation, supported by some evidence, of the absence of assistance of counsel to review, develop, or amend the claims.

8. Between July 2015, and September 2017, this court went dark as regards McNeil’s PCR action, namely, sloughing myriad motions and inquiries from all parties—to include McNeil’s own pleas to the court, as he tried in vain to effect any line of communication or secure information.

9. The dilatory manner of the court in discharging McNeil’s PCR action disrupted all due process in a reasonable and timely administration of justice.

10. When McNeil moved the court for a *fourth* time to remove and substitute PCR counsel, it instead abandoned any rule on the motion, thereby subjecting McNeil to an ongoing adversarial battle

of wits with counsel, who had engaged in off-the-record conversations with McNeil's trial counsel, thus becoming a de facto witness in the then-pending proceedings.

11. PCR counsel's failure to investigate the trial record, initiate discovery, and set down the facts, together with an ignorance of relevant case law, put McNeil in a place absent any meaningful representation, and established a post-conviction record devoid of pleadings or filings sufficient to address the merits of constitutional violations in McNeil's underlying criminal conviction.

12. In the notice of intent to dismiss, the court imbued its opinion with wild conjecture and speculation as to elements of the charged offenses without any fact-pattern support in the record.

13. The court could not evaluate the claims on the merits without first determining whether the claims were those McNeil wished to even pursue, and because the court denied an evidentiary hearing, McNeil was unable to mount a meaningful collateral attack of ineffective assistance of trial counsel.

14. Given the detrimental reliance on appointed counsel in McNeil's post-conviction relief application, as well as unsuccessful attempts by McNeil to have this court intervene in his behalf with the appointment of substitute counsel, McNeil would submit that relief under subsection (b)(6) of IRCP 60 is warranted by these unique and compelling circumstances, as McNeil has no option of filing a successive application for post-conviction relief under the Idaho Uniform Post-Conviction Procedure Act and, further, has no cognizable claim for ineffective assistance of PCR counsel.

15. A declaration of Lloyd Hardin McNeil in support of this motion is filed contemporaneously herewith.

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WHEREFORE, McNeil prays this court set aside the final judgment in Case No. CV PC 2014-15680 and allow amendment to the post-conviction relief application in the interests of justice.

DATED this _____ day of February, 2019.

Lloyd Hardin McNeil
Petitioner, pro se

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury, pursuant to the law of the state of Idaho, that the foregoing is true and correct.

DATED this _____ day of February, 2019.

Lloyd Hardin McNeil
Petitioner, pro se

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of February, 2019, I mailed a true and correct copy of this MOTION AND DECLARATION IN SUPPORT FOR RELIEF FROM JUDGMENT (IRCP 60(b)(6)) for the purposes of filing with the court and of mailing a true and correct copy—via the prison mail system—for processing to the U.S. mail system to:

Ada County Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83702

Lloyd Hardin McNeil
Petitioner, pro se

DECLARATION IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT

STATE OF TEXAS)
) ss.
COUNTY OF MAVERICK)

I, the undersigned, LLOYD HARDIN MCNEIL, being first duly sworn on oath, depose and say that:

1. I am the Petitioner in the foregoing post-conviction action;
2. I am currently incarcerated at Eagle Pass Correctional Facility, Maverick County, Texas, by authority of the Idaho Department of Correction, and under the direct care, custody and control of Waymon Barry, warden, pursuant to Idaho Code, Title 20;
3. Hereinbelow, I assert that court-appointed post-conviction counsel disregarded, or otherwise neglected to consult on, claims which compelled me to pursue relief from ineffective assistance of trial counsel, namely:
 - (a) Exhibit 95 had been ruled as inadmissible, but went unchallenged by trial counsel in its entirety before the jury;
 - (b) An expert witness in fire reconstruction was never called, though he would have certainly challenged the position of decedent's body;
 - (c) Trial counsel failed to object to exhibit 295;
 - (d) Trial counsel failed to object to exhibit 10;
 - (e) Trial counsel failed to object to exhibit 3;
 - (f) Trial counsel failed to cross examine Mariesa Hansen;
 - (g) Trial counsel failed to call Joe Riso;

- (h) Trial counsel failed to move for DNA testing;
- (i) Trial counsel failed to recall Dr. Garrison;
- (j) Trial counsel coerced me to waive my right to a speedy trial;
- (k) Trial counsel abandoned me during critical-stage plea negotiations;
- (l) Trial counsel neglected to call a pathologist during the sentencing hearing;

4. For years I exhorted the court to dismiss post-conviction counsel and assign a more capable lawyer in his stead, citing an unwillingness and inability on the part of appointed counsel to represent my best interests—admonishing the court at one point with my desperate, handwritten declaration, “I believe [counsel] is a professional saboteur.”

FURTHER your declarant sayeth not.

DATED this _____ day of February, 2019.

LLOYD HARDIN MCNEIL
IDOC No. 103513
Eagle Pass Correctional Facility
Maverick County, Texas

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury, pursuant to the law of the state of Idaho, that the foregoing is true and correct.

DATED this _____ day of February, 2019.

Lloyd Hardin McNeil
Petitioner, pro se