

**BOISE, TUESDAY, OCTOBER 20, 2009, AT 9:00 AM**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 35502**

**GERALD ANGELO BARCELLA,** )  
 )  
 **Petitioner-Appellant,** )  
 )  
 **v.** )  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Respondent.** )  
 \_\_\_\_\_ )

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

Nevin, Benjamin, McKay & Bartlett LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

\_\_\_\_\_

Gerald A. Barcella appeals from the district court's denial of his application for post-conviction relief. Specifically, Barcella contends that the State's motion did not provide adequate notice for summary dismissal, that the district court erred in summarily dismissing some claims, and that Barcella's trial counsel was ineffective in prohibiting Barcella from testifying.

**BOISE, TUESDAY, OCTOBER 20, 2009, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 35231**

**LEANN CRAIG,** )  
 )  
 **Plaintiff-Appellant,** )  
 )  
 **v.** )  
 )  
 **STEVEN JOHN GELLINGS, DEVERL** )  
 **WATTENBARGER, BART** )  
 **WATTENBARGER, CAROL** )  
 **WATTENBARGER, AND** )  
 **WATTENBARGER FARMS,** )  
 )  
 **Defendants-Respondents.** )  
 )  
 \_\_\_\_\_ )

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Curtis & Browning Law Offices, P.A., Idaho Falls, for appellant.

Tolman & Brizee, P.C., Twin Falls, for respondents.

\_\_\_\_\_  
Leann Craig brought a personal injury action against the defendants. She died before trial and the district court dismissed her case on the basis that her claims did not survive her death. Her attorney now appeals, contending that claims for economic loss should be deemed to survive for the benefit of a claimant's estate.

**BOISE, TUESDAY, OCTOBER 20, 2009, AT 1:30 PM**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 35271**

**JODY CARR,** )  
 )  
 **Petitioner-Appellant,** )  
 )  
 **v.** )  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Respondent.** )  
 \_\_\_\_\_ )

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Randy J. Stoker, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

Jody Carr met S.B. at a bar and the two drove to a secluded location to engage in intercourse. According to the state's allegations, when S.B. exited to the front of the vehicle, Carr ran over her twice. Carr believed S.B. was dead and left the scene. Carr returned the next morning to make sure he did not leave any evidence and ran over S.B.'s body a third time to make sure she was not still alive. Carr fled to California with his family and was later arrested and returned to Idaho. Carr pled guilty to first degree murder. The district court sentenced Carr to a unified term of life imprisonment, with a minimum period of confinement of twenty-five years.

Carr filed a pro se application for post-conviction relief alleging that the conditions of his pretrial confinement rendered his guilty plea involuntary, that the police destroyed potentially exculpatory evidence, and that he received ineffective assistance of counsel. Carr also submitted an affidavit detailing his complaints. The district court appointed post-conviction counsel and gave notice of its intent to dismiss the application. Among other things, the district court reasoned that the claims relating to Carr's conditions of confinement would be more appropriately addressed through an action for habeas corpus relief and Carr's remaining claims did not raise genuine issues of material fact.

Carr filed an amended application arguing that the conditions of his confinement affected the voluntariness of his guilty plea and that his other claims raised genuine issues of material fact which merited an evidentiary hearing. Carr filed an affidavit from his attorney relating the account of Carr's parents concerning their attempt to view or retrieve his vehicle with potentially

exculpatory evidence inside only to be told that it had been destroyed. The district court gave a second notice of intent to dismiss because Carr failed to raise genuine issues of material fact, failed to support his claims with admissible evidence, several of his claims were clearly contradicted by his previous sworn testimony, and others were precluded because his case never went to trial.

Carr then filed another response with affidavits from himself and his stepfather. Carr's affidavit detailed evidence that was allegedly destroyed by police. Additionally, it alleged that counsel failed to investigate the correct crime scene which would have had footprints, cigarette butts, and tire tracks tending to prove his innocence. The affidavit of Carr's stepfather alleged that the detective told him that Carr's vehicle had been inspected and no evidence was retrieved before it was destroyed. The district court summarily dismissed Carr's application based on the reasoning given in its two notices of intent to dismiss. Carr appeals.