IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35847

FRANCISCO ANGULO-LOPEZ,	)	**2009 Unpublished Opinion No. 698**
	)	
Petitioner-Appellant,	)	**Filed: November 25, 2009**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
STATE OF IDAHO,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Respondent.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Order dismissing petition for post-conviction relief, affirmed.

Francisco Angulo-Lopez, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Francisco Angulo-Lopez appeals from the district court's order dismissing his post-conviction relief petition for inactivity pursuant to Idaho Rule of Civil Procedure 40(c).

I.

BACKGROUND

Angulo-Lopez was convicted of trafficking in methamphetamine and sentenced to a unified life term with fifteen years determinate. This Court affirmed his conviction and sentence on appeal. In April 2007, Angulo-Lopez filed a pro se petition for post-conviction relief, alleging that he was denied a fair trial due to ineffective assistance of counsel and erroneous evidentiary rulings. The district court appointed counsel to represent Angulo-Lopez, and the attorney successfully sought leave of court to conduct discovery pertinent to Angulo-Lopez's post-conviction claims. On September 29, 2008, the district court issued a notice of its intent to dismiss the petition for inactivity pursuant to Idaho Rule of Civil Procedure 40(c). Angulo-

Lopez did not respond to this notice and, on October 22, 2008, the court dismissed the petition. Angulo-Lopez appealed.

The State Appellate Public Defender was appointed to represent Angulo-Lopez on appeal, and that office was later replaced by conflict counsel. Thereafter however, the appellate attorney moved to withdraw, which motion was granted by the Idaho Supreme Court, and Angulo-Lopez now proceeds with the appeal pro se. Angulo-Lopez argues on appeal that the district court erred in dismissing his petition because evidence was introduced at his trial that was the fruit of an illegal search and seizure, he received ineffective assistance from his defense counsel, and he was denied the right to confront his accusers.

II.

ANALYSIS

The district court here did not address the merits of the claims in Angulo-Lopez's post-conviction petition; the only ruling we are reviewing on appeal is the district court's dismissal of Angulo-Lopez's petition on the basis of inactivity.

An action for post-conviction relief is a new proceeding, separate from the criminal action. It is civil in nature and is therefore governed by the Idaho Rules of Civil Procedure. *Pizzuto v. State*, 127 Idaho 469, 470, 903 P.2d 58, 59 (1995); *Mata v. State*, 124 Idaho 588, 591, 861 P.2d 1253, 1256 (Ct. App. 1993). Idaho Rule of Civil Procedure 40(c) authorizes a trial court to dismiss a complaint or petition if no action has been taken in the litigation for a period of six months and good cause for retention is not shown. We review a trial court's decision to dismiss under I.R.C.P. 40(c) for an abuse of discretion. *Sato v. Schossberger*, 117 Idaho 771, 775, 792 P.2d 336, 340 (1990); *Madsen v. Nuxoll*, 120 Idaho 530, 531, 817 P.2d 196, 197 (Ct. App. 1991); *Agrodyne, Inc. v. Beard*, 114 Idaho 342, 345, 757 P.2d 205, 208 (Ct. App. 1988).

In this case, the record shows that Angulo-Lopez did not respond to the district court's notice that his case would be dismissed for inactivity. In fact, Angulo-Lopez does not even argue on appeal that his petition was not subject to dismissal under Rule 40(c). As neither the record nor Angulo-Lopez's brief shows the district court abused its discretion by dismissing the case for inactivity, the order of dismissal is affirmed.

Judge GUTIERREZ and Judge GRATTON **CONCUR.**