

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37188

CLINTON L. PLUMB,	)	2011 Unpublished Opinion No. 501
	)	
<b>Petitioner-Appellant,</b>	)	<b>Filed: May 31, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
STATE OF IDAHO,	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Respondent.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Order summarily dismissing applications for post-conviction relief, affirmed.

Clinton L. Plumb, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

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GRATTON, Chief Judge

Clinton L. Plumb appeals, pro se, from the district court’s summary dismissal of his consolidated applications for post-conviction relief. We affirm.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Plumb pled guilty to sexual abuse of a child under sixteen years of age, I.C. § 18-1506(b), and was sentenced to a term of fifteen years with seven years determinate. Plumb filed an application for post-conviction relief acknowledging his guilt, but asserting that he pled guilty on the assumption the district court would retain jurisdiction, claiming that the prosecutor put on evidence that did not exist, and seeking leniency. The district court appointed counsel and the State filed an answer. Plumb filed a second application for post-conviction relief denying his guilt and asserting that the public defender did not help him, but, instead, decided to be on the prosecutor’s side, that he intended to plead not guilty, but the public defender pled guilty on his behalf, and that he should have been released due to false information. The district court

extended the appointment of counsel to include the second application and also consolidated the cases involving the two applications. The State filed a motion for summary dismissal which the district court granted. Plumb appeals.

## II. ANALYSIS

Plumb's opening brief on appeal is simply a statement of taking responsibility for his crime. Plumb states: "I am owning up to my actions--Reasons are I did the crime and I didn't think before I had done it. I would not of done it if I was thinking. I feel a lot better when I own up to it, then I did when I lied about this issue." The State argues that this Court should decline appellate review because Plumb has failed to assert a specific error of the district court and has failed to otherwise support his appeal with legal authority or argument. In his reply brief, Plumb states that by owning up to his crime he should have his sentence reduced to a term of seven years with five years determinate so that he can get involved in the classes he needs and be released from prison.

In the district court, Plumb's counsel argued that the applications demonstrated a question of fact regarding whether the plea of guilty was knowing and voluntary or coerced and whether Plumb was competent to enter the guilty plea. In addition, counsel asked that, if the court disagreed with the assertion of factual issues, the court could consider the applications as a request for leniency under Idaho Criminal Rule 35. The district court granted the State's motion for summary dismissal, specifically noting the pleading requirements for an application for post-conviction relief and several cases addressing the standards for summary dismissal. The district court held that Plumb had failed to demonstrate any genuine issue of material fact and that the allegations were simply bald, unsupported assertions. In addition, the district court determined that Plumb had already filed a Rule 35 motion and was not entitled to have the applications treated as a second Rule 35 motion.

It appears that Plumb's appeal is actually a continuation of his request for leniency. Plumb has neither assigned error to the district court's determination nor presented argument or authority for this Court's review. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). The appellate courts will not review actions of the district court for which no error has been assigned or review the record for errors. *State v. Hoisington*, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983).

Plumb has failed to demonstrate that the district court erred in its determination that summary dismissal was appropriate because Plumb had raised no genuine issue of material fact.

**III.**

**CONCLUSION**

The district court's order granting the State's motion for summary dismissal is affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**