IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40690

PHILLIP DUANE FLIEGER,	)	**2015 Unpublished Opinion No. 432**
	)	
Petitioner-Appellant,	)	**Filed: March 25, 2015**
	)	
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STATE OF IDAHO,	)	**THIS IS AN UNPUBLISHED**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 Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Randy J. Stoker, District Judge.

Judgment summarily dismissing action for post-conviction relief, affirmed.

Phillip Duane Flieger, Boise, pro se appellant.

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

LANSING, Judge

Philip Duane Flieger appeals the district court's summary dismissal of his petition for post-conviction relief. We affirm.

I.

BACKGROUND

A pickup driven by Flieger was stopped by a police officer for failing to stop at a stop sign. A drug detection dog and handler arrived to assist in the stop, and the dog alerted to Flieger's vehicle. After the dog alerted, Flieger consented to a search of his person, and the officers found over five thousand dollars in cash and a motel key. The officers then conducted a search of the pickup and found a black bag containing heroin; methamphetamine; cocaine; and drug paraphernalia, including syringes. Flieger was on probation for a previous conviction for possession of methamphetamine and his probation officer was informed that a motel key was

found in Flieger's pocket. The probation officer went to the motel, conducted a search of the room, and found methamphetamine and drug paraphernalia.

Flieger was charged with three counts of possession of a controlled substance with intent to deliver, Idaho Code § 37-2732(a)(1)(A), with a persistent violator sentence enhancement, I.C. § 19-2514, and with a second enhancement for a second conviction under the Uniform Controlled Substance Act, I.C. § 37-2739. Prior to trial, the State filed a notice of intent to introduce evidence of other acts pursuant to Idaho Rule of Evidence 404(b). Upon a defense objection, the district court disallowed some of the evidence but held that the State could present evidence of Flieger's prior conviction and probation status, his methamphetamine use, and the drugs and paraphernalia found in the motel room. Prior to trial, Flieger moved to suppress the evidence of the drugs and paraphernalia found in his pickup and to dismiss the charges because of an alleged violation of his speedy trial rights. The district court denied both motions.

At trial, the defense read into the record a transcript of the testimony of Robert Berry to the effect that Berry had borrowed Flieger's pickup earlier on the day of Flieger's arrest, that the black bag with the drugs and paraphernalia belonged to a man he knew only as "Juan" or "Booger," and that the bag was inadvertently left in the vehicle when the vehicle was returned to Flieger. From this evidence, Flieger asserted that he had no knowledge of the drugs' presence in his vehicle. Based upon other defense witness testimony, Flieger claimed that he was carrying a large amount of cash because he was going to buy a car for his wife and that he had rented the motel room because his house was being fumigated and because he and his wife needed to spend more time together away from their family.

Flieger was acquitted of the possession with intent to deliver offenses, but was found guilty of three lesser-included offenses of possession of a controlled substance, I.C. § 37-2732(c)(1). The jury also found for the State on both sentence enhancements. The district court imposed concurrent life sentences with ten years fixed. Flieger appealed, arguing that the district court improperly admitted the Rule 404(b) evidence and that the prosecutor committed fundamental error by eliciting testimony referencing Flieger's post-*Miranda* silence[1]. This Court affirmed the convictions. *State v. Flieger*, Docket No. 36866 (Ct. App. June 9, 2011) (unpublished).

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

Thereafter, Flieger filed the instant action for post-conviction relief. In his petition, Flieger asserted numerous claims of ineffective assistance of counsel against his three appointed trial counsel and against his appointed appellate counsel. Flieger also asserted numerous claims that the trial court, the prosecution, and the police violated his constitutional rights. The State moved for summary dismissal of the petition on multiple grounds, including that Flieger's allegations were conclusory, that he had failed to support his claims with admissible evidence, that the claims were unsupported by the record, and that the claims were without support in the law. The district court granted the State's motion and dismissed the petition. Flieger appeals from the judgment.

II.
STANDARDS OF REVIEW

A petitioner for post-conviction relief bears the burden to prove by a preponderance of the evidence the allegations upon which the request for post-conviction relief is based. *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); *Goodwin v. State*, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002). A petition for post-conviction relief must be verified with respect to facts within the personal knowledge of the petitioner, and affidavits, records, or other evidence supporting its allegations must be attached, or the petition must state why such supporting evidence is not included. I.C. § 19-4903. In other words, the petition must present or be accompanied by admissible evidence supporting its allegations or it will be subject to dismissal. *Wolf v. State*, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011); *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

Idaho Code section 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to a motion by a party or upon the court's own initiative, if "it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." I.C. § 19-4906(c). When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008); *Roman*, 125 Idaho at 647, 873 P.2d at 901. Moreover, because the district court rather than a jury will be the trier of fact in the event of

an evidentiary hearing, the district court is not constrained to draw inferences in the petitioner's favor, but is free to arrive at the most probable inferences to be drawn from the evidence. *State v. Yakovac*, 145 Idaho 437, 444, 180 P.3d 476, 483 (2008); *Wolf*, 152 Idaho at 67, 266 P.3d at 1172; *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). Such inferences will not be disturbed on appeal if the uncontroverted evidence is sufficient to justify them. *Chavez v. Barrus*, 146 Idaho 212, 218, 192 P.3d 1036, 1042 (2008); *Hayes*, 146 Idaho at 355, 195 P.2d at 714; *Farnsworth v. Dairymen's Creamery Ass'n*, 125 Idaho 866, 868, 876 P.2d 148, 150 (Ct. App. 1994).

Claims may be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. *Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010); *McKay v. State*, 148 Idaho 567, 570, 225 P.3d 700, 703 (2010); *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009); *Charboneau v. State*, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007); *Berg v. State*, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998); *Murphy v. State*, 143 Idaho 139, 145, 139 P.3d 741, 747 (Ct. App. 2006); *Cootz v. State*, 129 Idaho 360, 368, 924 P.2d 622, 630 (Ct. App. 1996). Thus, summary dismissal of a claim for post-conviction relief is appropriate when the court can conclude, as a matter of law, that the petitioner is not entitled to relief even with all disputed facts construed in the petitioner's favor. For this reason, summary dismissal of a post-conviction petition may be appropriate even when the State does not controvert the petitioner's evidence. *See Payne*, 146 Idaho at 561, 199 P.3d at 136; *Roman*, 125 Idaho at 647, 873 P.2d at 901.

Conversely, if the petition, affidavits, and other evidence supporting the petition allege facts that, if true, would entitle the petitioner to relief, the post-conviction claim may not be summarily dismissed. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); *Berg*, 131 Idaho at 519, 960 P.2d at 740; *Stuart v. State*, 118 Idaho 932, 934, 801 P.2d 1283, 1285 (1990); *Sheahan v. State*, 146 Idaho 101, 104, 190 P.3d 920, 923 (Ct. App. 2008); *Roman*, 125 Idaho at 647, 873 P.2d at 901. If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Kelly*, 149 Idaho at 521, 236 P.3d at 1281; *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Goodwin*, 138 Idaho at 272, 61 P.3d at 629.

On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief. *Ridgley v. State*, 148 Idaho 671, 675, 227 P.3d 925, 929 (2010); *Berg*, 131 Idaho at 519, 960 P.2d at 740; *Sheahan*, 146 Idaho at 104, 190 P.3d at 923; *Roman*, 125 Idaho at 647, 873 P.2d at 901. Over questions of law, we exercise free review. *Rhoades v. State*, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009); *Downing v. State*, 136 Idaho 367, 370, 33 P.3d 841, 844 (Ct. App. 2001); *Martinez v. State*, 130 Idaho 530, 532, 944 P.2d 127, 129 (Ct. App. 1997).

To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688; *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Strickland*, 466 U.S. at 692; *Aragon*, 114 Idaho at 761, 760 P.2d at 1177. This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

"The constitutional requirement for effective assistance of counsel is not the key to the prison for a defendant who can dredge up a long series of examples of how the case might have been tried better." *Ivey v. State*, 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). Determining whether an attorney's pretrial preparation falls below a level of reasonable performance constitutes a question of law, but is essentially premised upon the circumstances surrounding the attorney's investigation. *Gee v. State*, 117 Idaho 107, 110, 785 P.2d 671, 674 (Ct. App. 1990). To prevail on a claim that counsel's performance was deficient in failing to interview witnesses, a defendant must establish that the inadequacies complained of would have made a difference in the outcome. *Id.* at 111, 785 P.2d at 675. It is not sufficient merely to allege that counsel may

have discovered a weakness in the State's case. *Id.* We will not second-guess trial counsel in the particularities of trial preparation. *Id.*

III.
ANALYSIS

Flieger's petition asserted literally scores of claims, sub-claims, and isolated undeveloped references to alleged violations of his constitutional rights. He contended that nearly everything that his three appointed trial counsel and his appointed direct appeal counsel did or did not do during their representation was ineffective assistance of counsel. Flieger contended that trial counsel should have filed more pretrial motions and that additional trial objections should have been raised. Flieger further contended that as to objections that were made and as to motions that were raised, trial counsel should have done a better job. Flieger also claimed that his appellate counsel was ineffective by failing to raise each and every possible claim of error in Flieger's direct appeal. Sprinkled among these claims, Flieger also asserted numerous allegations of prosecutorial misconduct, police misconduct, and court action or omission that he contends violated his constitutional rights.

Flieger's claims of error and arguments on appeal are difficult to decipher. His briefing largely repeats, often verbatim, sections of his brief in support of his petition below, without specific assignment of error in the district court's dismissal of his petition. We address those claims of error we consider sufficiently articulated.

A. Claims Relating to the Alleged Loss of Key Testimony of Two Defense Witnesses

Flieger makes a number of claims relating to the alleged loss of key testimony of two defense witnesses. Before trial, the defense disclosed to the prosecution a handwritten statement or "affidavit" prepared by proposed defense witness Robert Berry. At trial, and before Berry testified, issues arose concerning the admissibility of some of his proposed testimony and whether Berry would be incriminating himself through that testimony. An attorney was appointed to represent Berry. After consulting with Berry, the attorney reported that Berry was willing to waive his right against self-incrimination and testify. The court then informed Berry of his right against self-incrimination. At that point, the jury was absent, having been sent home for the day, but Berry gave testimony relevant to Flieger's pending motion to dismiss the charge for violation of his speedy trial right. The principal purpose of Berry's testimony was to relate what was said to him by another individual who was no longer available to testify. Berry

testified as follows: Earlier on the day of Flieger's arrest, Berry had borrowed Flieger's truck to help a friend move. Another acquaintance helping him brought along a third man known to Berry only as "Juan" or "Booger." Juan had a black shaving kit bag full of drugs that Berry observed and described in some detail. Juan shared some of the drugs with Berry. After the vehicle was returned to Flieger, Juan called Berry, upset and angry because he had inadvertently left the bag of drugs in Flieger's vehicle in the same location where it was later found by the police at Flieger's traffic stop. Berry further said that he had spoken to Juan shortly before Flieger's initial trial date, and that Juan assured him that he was ready and willing to testify at Flieger's trial that the drugs found in the vehicle belonged to him so that Flieger, an innocent man, would not go to jail. After giving this sworn testimony Berry was allowed to confer privately with his attorney. Berry then returned to court and stated that he had decided to invoke the Fifth Amendment and not testify further.

During brief questioning at the close of Berry's testimony on the speedy trial motion, Berry stated that he was invoking the Fifth Amendment because during the break the prosecutor told him that he was "probably incriminating myself, and they'd try to come at me with charges." In post-conviction proceedings Berry's attorney submitted an affidavit confirming that the County prosecutor had stated that if Berry admitted to a crime or committed perjury during his testimony he would be charged. From this evidence, Flieger contends that the prosecutor committed misconduct at trial by threatening Berry with prosecution if he perjured himself on the stand or admitted to criminal conduct, and that this threat caused Berry to invoke the Fifth Amendment and decline to testify before the jury. Flieger contends that, as a result, he was unable to present Berry's key exonerating testimony. Flieger also tangentially asserts that the district court violated his constitutional rights by dissuading Berry from testifying.

Even assuming prosecutorial misconduct and that the district court improperly convinced Berry not to testify before the jury, the record does not support Flieger's claim of prejudice in either instance. Following Berry's testimony and his invocation of the Fifth Amendment and refusal to testify at trial, Flieger's defense counsel successfully argued that Berry's hearing testimony was itself admissible at Flieger's trial. That extensive testimony (spanning seventy-three pages of transcript) was read into the record before the jury by a third party, and the district court gave an instruction to the jury that "this evidence is entitled to the same consideration you would give had the witness testified from the witness stand." Thus, Flieger was not prejudiced

by any alleged prosecution or court misconduct causing Berry not to take the stand because the jury actually heard Berry's testimony that, if believed, would have exculpated Flieger.

This circumstance also resolves a number of Flieger's other claims of error. Flieger contends, variously, that the prosecutor was guilty of misconduct for "suppressing" Berry's written statement or "affidavit" from the jury, that the district court was guilty of misconduct for admonishing a nonpresent jail officer for notarizing Berry's statement, and that his trial counsel was ineffective in failing to offer that document into evidence. Even assuming the truth of Flieger's allegations, because Berry's testimony was effectively presented to the jury, Flieger suffered no prejudice.

Flieger also asserts a number of claims relating to the alleged loss of Juan's testimony. One such claim involves the vacation of Flieger's initial trial date. Flieger was free on bond with his trial set to commence on Tuesday, September 23, 2008. On the Thursday before trial, Flieger met with his trial counsel to prepare for trial and scheduled further meetings for Friday and the weekend. Flieger did not appear for those subsequent meetings, and counsel's repeated calls to Flieger were not returned. At some point, defense counsel became aware that a warrant for Flieger's arrest had been issued for a probation violation in a separate case and that neither Flieger's bondsman in this case nor Flieger's parole officer had been able to locate him. At a status conference called by the court on Monday, September 22, defense counsel informed the district court of these matters. The court determined that if Flieger did not turn himself in on the warrant by 4:00 p.m. that day that trial the next day would be vacated. Prior to 4:00 p.m., the court learned that Flieger had been in contact with his bondsman and had been informed of the deadline, but when Flieger did not turn himself in by that deadline the court vacated the trial. Flieger ultimately surrendered on the warrant at midnight that evening.

Flieger blames his counsel for failing to ensure that he was tried on September 23, contending that counsel was ineffective for "waiving" his right to a speedy trial. He asserts as prejudice the loss of Juan's exonerating testimony, contending that, based on Berry's statement, Juan was ready, willing, and able to testify on September 23 that the drugs belonged to him and not Flieger, but thereafter and before Flieger's subsequent trial, Juan was deported. Flieger also contends that the prosecution was guilty of misconduct for allegedly deporting Juan to deprive Flieger of his witness. Flieger also seems to assert that his direct appeal counsel was ineffective for failing to raise as an appellate issue court error in the denial of Flieger's subsequent motion to

dismiss the charges for an alleged violation of his constitutional right to a speedy trial. Flieger argues that proper application of the speedy trial considerations set forth in *Barker v. Wingo*, 407 U.S. 514 (1972) show that the motion should have been granted because he was prejudiced by the loss of Juan's testimony.

We hold that Flieger has not made a prima facie showing of prejudice on any of these claims. Through Berry's testimony, the jury heard not only what Berry observed and did with regard to the drugs, but also that Juan admitted ownership of the drugs, that Juan had inadvertently left them in Flieger's pickup, and that Juan was willing to so testify in Flieger's favor. Thus, not only did the jury hear all the exculpatory information that Juan allegedly would have testified to, but Flieger was actually benefitted by the fact that, with Juan's statements admitted through the testimony of Berry, Juan was not subjected to cross-examination and impeachment by the prosecution.

Accordingly, the district court did not err in dismissing these claims for post-conviction relief.

B. Suppression Motion

Prior to trial, Flieger moved to suppress the drug evidence. He contended that the officer who conducted the traffic stop lacked reasonable suspicion because the officer's stated reason for his action, that Flieger had run a stop sign, was factually untrue. In the alternative, Flieger asserted that even if he did in fact fail to stop at the stop sign, the drug evidence should still be suppressed because the totality of the evidence showed that the officer was using the traffic infraction as a pretext for the stop when the officer's real aim was to investigate for drugs. The district court denied the motion. Here, Flieger challenges the district court's summary dismissal of his claim that his direct appeal counsel was ineffective for failing to challenge the denial of his suppression motion on appeal. He contends his pretext challenge to the officer's conduct would have prevailed.

Flieger has not shown either deficient performance or prejudice on this claim because the law is settled that a "pretext challenge" is not a viable theory of suppression under the Fourth Amendment. In *Whren v. United States*, 517 U.S. 806 (1996), the defendant sought suppression of drug evidence found during a traffic stop on the theory that the traffic infractions were merely a pretext for the stop and that the officer's true reason for detaining him was suspicion of drug activity. The Supreme Court rejected the argument, holding that "subjective intentions [of the

officers] play no role in ordinary, probable-cause Fourth Amendment analysis." The Court said that its earlier cases "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." *Id.* at 813. Thus, if an officer observed a traffic infraction, there was probable cause to stop the driver, and it is irrelevant whether the officer also had suspicions of other criminal activity that he wished to investigate. *Id.* at 810-13. *See also United States v. Hudson*, 100 F.3d 1409, 1415 (9th Cir. 1996); *United States v. Michael R.*, 90 F.3d 340, 347 (9th Cir. 1996); *State v. Schwarz*, 133 Idaho 463, 467-68, 988 P.2d 689, 693-94 (1999); *State v. Myers*, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990); *State v. Law*, 115 Idaho 769, 772, 769 P.2d 1141, 1144 (Ct. App. 1989).

Here, because the court considering Flieger's suppression motion found as fact that the officer saw Flieger run a stop sign, Flieger's pretext challenge has no legal merit. Flieger has thus failed, as a matter of law, to show either deficient performance in his appellate counsel's failure to raise such a claim of error in the direct appeal or prejudice from that failure.

C. Destroying or Failing to Preserve Exculpatory Evidence

Flieger next contends that the district court erred in dismissing his claim that the police violated his constitutional rights by destroying or failing to preserve exculpatory evidence. He asserts that when the police found and searched the bag containing the drugs in his vehicle, they failed to wear gloves, resulting in contamination of the evidence. He also contends that his constitutional rights were violated because the police destroyed two syringes pursuant to department policy and because the remaining drug evidence was not fingerprinted or subjected to DNA testing.

Flieger's allegations do not amount to a valid claim for the failure to preserve evidence or for the destruction of evidence. The State does not have a general duty to gather evidence for the accused. *State v. Reyna*, 92 Idaho 669, 674, 448 P.2d 762, 767 (1968); *State v. Bryant*, 127 Idaho 24, 28, 896 P.2d 350, 354 (Ct. App. 1995); *State v. Sena*, 106 Idaho 25, 27, 674 P.2d 454, 456 (Ct. App. 1983). The government's duty to use earnest efforts to preserve evidence for possible use by the defense in a criminal case applies only to material exculpatory evidence. *State v. Dopp*, 129 Idaho 597, 606, 930 P.2d 1039, 1048 (Ct. App. 1996). This constitutional obligation to preserve evidence is limited to evidence that possesses an exculpatory value that was apparent before the evidence was destroyed. *California v. Trombetta*, 467 U.S. 479, 489 (1984). If the content of the lost evidence is unknown, and the item is therefore of only

potentially exculpatory value, a due process violation will be established only if the defendant shows that the government acted in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988).

In *Dopp*, this Court rejected an assertion that law enforcement acted in bad faith by destroying a piece of evidence, noting that "the evidence does not support a conclusion that law enforcement staff disposed of the [evidence] in an effort to prevent Dopp from obtaining exculpatory evidence for use at trial." *Dopp*, 129 Idaho at 607, 930 P.2d at 1049. Neither has Flieger made such a showing. Flieger presented no evidence supporting a conclusion that the police handling of the bag and its contents without gloves was done in bad faith or that the destruction of the syringes was in bad faith. Flieger's allegations of police failure to conduct DNA or fingerprint evidence on the bag and its contents is without merit because, as stated above, the State has no obligation to gather evidence for an accused. The defense could have requested the testing; it was not the State's duty to do so.

The district court correctly held that Flieger did not make a prima facie showing of a valid constitutional claim for loss or destruction of evidence.

D. Sentencing Issues

Flieger next contends that the district court erred in dismissing his claims relating to his sentencing. Flieger's first claim was that the trial court violated his constitutional rights at sentencing by finding that he was guilty of the charged offenses of possession with intent to deliver even though the jury acquitted him of those offenses and convicted him only for the lesser offenses of simple possession. This claim is without factual or legal merit. The sentencing court did not find that Flieger was guilty of possession with intent to deliver. Instead, the court said that given Flieger's admitted thirty-year-period of drug addiction and the total lack of any employment or tax returns during this time, Flieger would have "had to deal." Moreover, even *had* the district court at sentencing found by a preponderance of the evidence that Flieger was guilty of the charges for which the jury acquitted, it would not amount to a violation of Flieger's constitutional rights. *See United States v. Watts*, 519 U.S. 148, 155-56 (1997); *State v. Flowers*, 150 Idaho 568, 574, 249 P.3d 367, 373 (2011). The post-conviction district court correctly dismissed this claim.

Flieger next contends that his sentencing counsel was ineffective for failing to object to the district court's reliance on two sentencing enhancements in fashioning Flieger's sentences

for, he contends, I.C. § 19-2520E prohibits this practice. He is incorrect as a matter of law. Idaho Code § 19-2520E states:

> Notwithstanding the enhanced penalty provisions in sections 19-2520, 19-2520A, 19-2520B and 19-2520C, Idaho Code, any person convicted of two (2) or more substantive crimes provided for in the above code sections, which crimes arose out of the same indivisible course of conduct, may only be subject to one (1) enhanced penalty.

The sentencing limitation in Idaho Code § 19-2520E does not apply here because the "enhanced penalty provisions in sections 19-2520, 19-2520A, 19-2520B and 19-2520C" were not alleged in Flieger's case. Instead, the State charged, and the jury found, an enhancement for being a persistent violator of the law, I.C. § 19-2514, and a second enhancement for a second conviction under the Uniform Controlled Substance Act, I.C. § 37-2739. Neither of these statutes prohibits the imposition of both enhancements. Moreover, we note that the former enhancement completely subsumes the latter, resulting in no prejudice to Flieger in any event. Idaho Code § 37-2739 provides: "Any person convicted of a second or subsequent offense under this act . . . may be imprisoned for a term up to twice the term otherwise authorized." Each of Flieger's substantive convictions for possession of methamphetamine, cocaine, and heroin carried a maximum of seven years imprisonment before enhancement; thus, the section 37-2739 enhancement acting alone would have authorized a maximum sentence of fourteen years for each crime. The persistent violator enhancement, I.C. § 19-2514, subsumes the section 37-2739 enhancement because it requires a unified sentence of not less than five years and authorizes a maximum term of life imprisonment. *State v. Toyne*, 151 Idaho 779, 781-83, 264 P.3d 418, 420-22 (Ct. App. 2011).

Accordingly, the district court did not err in dismissing this claim.

E. Remaining Claims of Error

We have reviewed Flieger's remaining claims of error involving alleged defense attorney misconduct, alleged court misconduct, alleged prosecutor misconduct and alleged police misconduct. The claims require no discussion and the district court did not err in dismissing them because they are vague, conclusory, unsupported with admissible evidence, unsupported by the record, or contrary to law.

IV.

CONCLUSION

The district court's judgment dismissing the petition for post-conviction relief is affirmed.

Chief Judge MELANSON and Judge GUTIERREZ **CONCUR.**