

*Barnhart v. State*, 122 Nev. Adv. Op. 26 (2006)<sup>1</sup>

**CRIMINAL LAW – HABEAS CORPUS**

**Summary**

Defendant appealed the district court's denial of her post-conviction habeas corpus petition. The Nevada Supreme Court granted certiorari to clarify the scope of issues that a district court may consider when conducting an evidentiary hearing on a post-conviction petition for a writ of habeas corpus.

**Disposition/Outcome**

The Nevada Supreme Court affirmed the district court's denial of the petition for writ of habeas corpus. The Court held that it was not an abuse of discretion to deny appellant the ability to present a new coercion defense at the evidentiary hearing when it had not been previously raised in the pleadings. The Court clarified that the district court does have discretion to allow a new issue to be raised at an evidentiary hearing if good cause is explicitly found and made part of the record. The Court then quickly dispatched her other arguments.

**Factual and Procedural History**

Appellant Barnhart pled guilty to two counts of armed robbery. The district court sentenced her to a total of three consecutive 24 to 120 month sentences due to the weapon enhancement of using a pellet gun in the course of the robberies.

Barnhart did not appeal the judgment of conviction, but filed a timely pro per post-conviction petition for writ of habeas corpus. The district court appointed counsel to represent her. Counsel then filed a supplemental petition alleging three grounds for relief: 1) ineffective assistance of counsel for advising Barnhart to plead guilty to armed robbery when she was just using a pellet gun, 2) ineffective assistance of counsel for failing to offer mitigating evidence, and 3) Barnhart was deprived of her right to a direct appeal due to her counsel's failure to appeal.

The district court rejected the State's motion for partial dismissal and held an evidentiary hearing on all of the claims in the supplemental petition. At the evidentiary hearing, Barnhart's counsel raised an additional defense of coercion that had not been raised before. The district court concluded that the new defense was not properly before the court and therefore disallowed it from being raised. The court then rejected Barnhart's other claims, and denied her habeas corpus petition.

Barnhart appealed, claiming the district court erred in dismissing the ineffective assistance of counsel claims regarding deprivation of appeal and the deadly weapon enhancement. She also appealed the district court's refusal to allow her to bring the additional defense of coercion during the evidentiary hearing.

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<sup>1</sup> Summarized by Robert Reid.

## **Discussion**

“Generally, the only issues that should be considered by the district court at an evidentiary hearing on a post-conviction habeas petition are those which have been pleaded in the petition or a supplemental petition and those to which the State has had an opportunity to respond.”<sup>2</sup> However, the district court does have the discretion to allow a petitioner to assert new claims under certain circumstances. These may include new issues that arise when new evidence is introduced at the hearing of which counsel was previously unaware, or when evidence has additional meaning due to a new law. If the court does allow these new issues to be introduced, the following procedures should be followed to allow the State to have an adequate opportunity to respond.

If the court finds that there is good cause to allow a petitioner to raise new issues, the court should explicitly make the findings on the record, and enumerate the additional issues that will be considered. After the evidentiary hearing, the court must allow the petitioner and the State to file supplemental pleadings addressing the new issues. At that point, the additional issues can be decided by the district court after any additional proceedings designated by the court. These issues can then be included in the final order disposing of the petition.

The Nevada Supreme Court stressed that even though the district court does have this discretion, it is under no obligation to consider new issues raised for the first time by the petitioner at the hearing. It should be the exception, rather than the norm, for the petitioner to be allowed to raise these new issues.

## **Conclusion**

Since the petitioner presented no evidence as to why the new issue coercion could not have been included in the supplemental petition, the district court did not abuse its discretion by refusing to allow the claim to be raised.

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<sup>2</sup> Barnhart v. State, 122 Nev. Adv. Op. 26, 3 (2006).