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SCT-Civ-2020-0112
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

RONALD GILLETTE,
Appellant/Plaintiff,

v.

**WARDEN, GOLDEN GROVE ADULT
CORRECTIONAL FACILITY,**
Appellee/Defendant.

) **S. Ct. Civ. No. 2020-0112**
) Re: Super. Ct. Misc. No. 69/2020 (STX)
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On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Jomo Meade

Considered: July 13, 2021
Filed: September 7, 2021

Cite as: 2021 VI 12

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Ronald Gillette
St. Croix, U.S.V.I.
Pro se,

Michael R. Francisco, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Ronald Gillette appeals from the Superior Court's October 29, 2020 order, which denied his petition for writ of habeas corpus. For the reasons that follow, we affirm.

I. BACKGROUND

¶ 2 On October 7, 2020, Gillette, proceeding *pro se*, filed a petition for writ of habeas corpus with the Superior Court. In his petition, Gillette first alleged that he was being unlawfully detained at the Citrus County Detention Facility in Florida operated by CoreCivic, LLC, on the basis that CoreCivic had no authority to incarcerate him because its contract with the Government of the Virgin Islands had purportedly expired on December 15, 2015, and his transfer to the Citrus County Detention Facility purportedly violated the terms of that contract. Gillette also alleged ineffective assistance of counsel against an unnamed attorney, who he alleged failed to file certain documents on his behalf.

¶ 3 The Superior Court *sua sponte* dismissed Gillette’s petition in an October 29, 2020 order, without awaiting or ordering an answer from the Government of the Virgin Islands. In its order, the Superior Court first noted that Gillette failed to comply with several provisions of the Virgin Islands Habeas Corpus Rules and the habeas corpus statute, such as by identifying “Warden, Golden Grove Adult Correctional Facility” as the respondent. Nevertheless, the Superior Court considered the petition on the merits, and held that Gillette failed to establish a *prima facie* case for relief with respect to either of his claims. Gillette timely filed a notice of appeal with this Court on November 12, 2020. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 4 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over “all appeals from the decisions of the courts of the Virgin Islands established by local law[.]” 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over “all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court.”

Because the Superior Court’s October 29, 2020 order resolved all of the claims between the parties, it is a final judgment within the meaning of section 32(a), thereby conferring jurisdiction on this Court. *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012).

¶ 5 This Court exercises plenary review of the Superior Court’s application of law. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 436 (V.I. 2013) (citing *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)).

B. Prima Facie Case

¶ 6 Gillette alleges that the Superior Court erred when it denied his habeas corpus petition without a hearing on the basis that he failed to establish a prima facie case.¹ Under Virgin Islands law, “[w]hen presented with a petition for a writ of habeas corpus, [the Superior Court] must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred.” *Rivera-Moreno v. Gov’t of the V.I.*, 61 V.I. 279, 311 (V.I. 2014). Thus,

¹ We note that Gillette has not filed a traditional appellate brief with this Court. His brief consists of only a single sentence, which reads in its entirety as follows: “Gillette (relies on all wording) contained in/on his notice of appeal; and (relies on all wording) contained in/on his petition and (all exhibits submitted and filed) in the Supreme Court of the Virgin Islands.” (Appellant’s Br. 1 (punctuation in original).)

Pursuant to Rule 22(m) of the Virgin Islands Rules of Appellate Procedure, “issues that were . . . raised or objected to but not briefed, or . . . are only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority, are deemed waived for purposes of appeal.” Gillette’s appellate brief certainly meets this standard, and would ordinarily warrant deeming all his claims waived, notwithstanding his status as a *pro se* litigant, since his “self-representation is not a license [excusing compliance] with relevant rules of procedural and substantive law.” *Thomas v. Cannonier*, S. Ct. Civ. No. 2007-0042, 2009 WL 1097509, at *2 (V.I. Apr. 7, 2009) (unpublished) (internal quotation marks omitted).

Nevertheless, the Government does not allege that Gillette has waived his claims, and in fact has briefed them on the merits, apparently relying on the legal arguments previously made in his notice of appeal. As such, the Government has “waived waiver.” *Simpson v. Golden*, 56 V.I. 272, 281 n.6 (V.I. 2012).

Gillette “was not required to establish his ultimate entitlement to habeas relief” to have his petition granted. *Blyden v. Gov’t of the V.I.*, 64 V.I. 367, 376 (V.I. 2016). Rather, “[g]ranting the writ of habeas corpus . . . constitutes an intermediate step in the statutory procedure” which requires the government to “file a ‘return’ responding to the allegations in the habeas corpus petition,” with the Government being required to “allege facts establishing the legality of the petitioner’s custody.” *Rivera-Moreno*, 61 V.I. at 312-13.

¶ 7 Gillette essentially alleged three claims in his habeas corpus petition. Each claim is addressed in turn.

1. Purported Unlawful Incarceration in Florida

¶ 8 With respect to his claim alleging that CoreCivic lacked the authority to incarcerate him due to the purportedly expired contract, the Superior Court held that Gillette failed to establish a prima facie case for the following reasons:

Petitioner alleges that he is being illegally held at “Corecnic in Florida” because he believes the contract between the Government of the Virgin Islands and the Citrus County Detention Facility has expired. This Court does not believe that this mere allegation meets the requirements for making a “prima facie” case for relief as required by 5 V.I.C. § 1302. The contract between the Government of the Virgin Islands and the Citrus County Detention Facility was executed in 2015 for a two-year term with two options to extend for an additional two years each. Assuming *arguendo*, that the Government of the Virgin Islands and the Citrus County Detention Facility opted to exercise the options to extend their service agreement, this agreement would be valid until 2021.

(S.A. 6.) In denying the petition on this basis, the Superior Court committed two critical errors. As noted above, the test the Superior Court must apply to determine whether a habeas corpus petition has set forth a prima facie case requires it to analyze the petition to determine “whether it states facts that, if true, entitle the petitioner to relief.” *Rivera-Moreno*, 61 V.I. at 311 (emphasis added). While this does not mean that the Superior Court is required to disregard all common

sense and give credence to allegations that are incredible as a matter of law, Gillette’s allegation that the contract between CoreCivic and the Government had expired and that the Citrus County Detention Facility lacked the authority to incarcerate him was not “impossible under the laws of nature” or so “unbelievable on its face” to warrant simply dismissing the claim as untrue. *Accord, United States v. Griffin*, 194 F.3d 808, 816-17 (7th Cir. 1999). This is especially true when Gillette did not simply make a naked allegation in his petition that the Citrus County Detention Facility operated under an expired contract but supported his claim by including a copy of a contract between the Government and CoreCivic with a December 15, 2017 expiration date.

¶ 9 The Superior Court further erred when it then proceeded to deny Gillette’s claim because that contract contained two provisions permitting an extension. “It is so well established as not to require discussion . . . that a [trial] court . . . must base its decision on evidence actually in the record of the case.” *In re People of the V.I.*, 51 V.I. 374, 390 (V.I. 2009) (quoting *United States ex rel. Collins v. Ashe*, 176 F.2d 606, 606 (3d Cir. 1949)). The limited record before the Superior Court—consisting only of Gillette’s petition and its attachments—contained absolutely no indication that the contract between the Government and CoreCivic had ever been extended beyond December 15, 2017, whether through invoking those provisions or otherwise. While the Superior Court may rightfully have assumed that it was extraordinarily unlikely that the Government would permit this contract to expire or that CoreCivic would continue to house Virgin Islands inmates in its facilities without any authority to do so, courts ultimately must make determinations based on actual evidence rather than probabilities or educated speculation. Notably, Rule 2(c) of the Virgin Islands Habeas Corpus Rules anticipates this situation and permits the Superior Court to request an informal response from the Government or other real party in interest, which may include directing the production of relevant documents not yet part of the

habeas record. Therefore, the Superior Court erred when it held that Gillette failed to establish a prima facie case on this basis.

¶ 10 Yet while the Superior Court erred in this regard, Rule 4(i) of the Virgin Islands Rules of Appellate Procedure provides that “[n]o error or defect in any ruling or order or in anything done or omitted by the Superior Court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact . . . is sufficiently minor so as not to affect the substantial rights of the parties.” Together with its appellate brief, the Government filed with this Court a supplemental appendix which contains copies of subsequent contracts between the Government and CoreCivic extending their earlier agreement through December 15, 2021. Because these materials were not part of the Superior Court record, they do not constitute the record on appeal, and would ordinarily be stricken and not considered by this Court. *See* V.I. R. APP. P. 10(a). However, in his reply brief, Gillette states that based on these documents, he now “herein and hereby concede[s] . . . to the contract being valid.” (Reply Br. 7.) Since Gillette has conceded that CoreCivic had a valid contract with the Government and consequently had the legal authority to incarcerate him at the Citrus County Detention Facility, reversing the October 29, 2020 order on this basis would serve no useful purpose, in that the Government would simply file these contracts with the Superior Court, which in light of Gillette’s concession would have no choice but to hold that Gillette has failed to establish a prima facie case. Therefore, we hold that even though the Superior Court erred in holding that Gillette failed to establish a prima facie case based on the record before it, the error is nevertheless harmless.

2. Transfer After Hospitalization

¶ 11 In his habeas corpus petition, Gillette alleged that even if the contract between CoreCivic and the Government had not expired, he had been transferred to the Citrus County Detention

Facility in violation of that contract. Specifically, Gillette contended that the contract provided that “the Government shall not transfer to [CoreCivic]’s custody any inmate who was hospitalized within the prior thirty (30) days,” S.A. 38, and that he had been transferred to the Citrus County Detention Facility 23 days after being released from a hospital.

¶ 12 But while Gillette raised this claim in his habeas petition, the Superior Court never addressed it in its October 29, 2020 order. “As this Court has previously emphasized, a court can never exercise its discretion to simply ignore a claim that a party has brought squarely before it.” *Bryan v. Fawkes*, 61 V.I. 416, 476 (V.I. 2014) (collecting cases). And because a court always “abuses its discretion when it fails to exercise its discretion,” this omission would ordinarily require that this Court vacate the October 29, 2020 order and direct the Superior Court to consider the claim on remand. *Id.* (quoting *Austin-Casares v. Safeco Ins. Co. of America*, 81 A.3d 200, 208 n.11 (Conn. 2013)).

¶ 13 Nevertheless, the Superior Court’s failure to consider this claim is ultimately harmless. Because this Court exercises plenary review over the denial of a habeas corpus petition for failure to state a prima facie case, it applies the same legal analysis on appeal that the Superior Court should have applied below, without any deference to the Superior Court’s decision (or lack thereof). *Joseph v. Daily News Publishing Co.*, 57 V.I. 566, 584 (V.I. 2012). Consequently, this Court may, in the interests of judicial economy, analyze this legal issue for the first time on appeal. *Rivera-Moreno*, 61 V.I. at 314.

¶ 14 We hold that Gillette failed to establish a prima facie case on this claim. While the contract provides that “the Government shall not transfer to [CoreCivic’s] custody any inmate who was hospitalized within the prior thirty (30) days,” S.A. 38, the documents Gillette filed with his petition reflect that he had been incarcerated in a CoreCivic facility in Mississippi immediately

prior to his incarceration. Thus, the Government never transferred Gillette to the custody of CoreCivic after his hospitalization, since Gillette had already been in CoreCivic's custody, with the transfer being simply from one CoreCivic facility to another.

3. Ineffective Assistance of Counsel

¶ 15 Finally, the Superior Court held that Gillette failed to establish a prima facie case on his ineffective assistance of counsel claim because his petition did not identify the allegedly ineffective attorney by name and otherwise failed to provide sufficient detail as to his alleged wrongdoing. The Superior Court is correct that Gillette's petition was highly ambiguous with respect to the ineffective assistance of counsel claim, to the point where it cannot meaningfully be considered. While it is certainly possible, based on a fleeting reference to the year 2010 in the petition, that Gillette was making an allegation against the attorney who represented him on his direct appeal, it is also possible Gillette could have been referring to an attorney he consulted with but never retained, or perhaps not referring to a lawyer at all.² Without providing it with more precise information, including the name of the allegedly ineffective attorney, the Superior Court could not meaningfully determine whether Gillette made the requisite showing that counsel's performance fell below an objective standard of reasonableness, let alone whether that unprofessional performance affected the result of any proceeding. *Corraspe v. People*, 53 V.I. 470, 479-80 (V.I. 2010).

III. CONCLUSION

¶ 16 The Superior Court erred when it held that Gillette did not establish a prima facie case that

² As the Superior Court noted in its October 29, 2020 order, repeatedly described this individual using terms such as "hybrid-counsel" and "certified public accountant," raising serious questions as to whether Gillette was even referring to a licensed attorney.

his incarceration was unlawful, and further erred when it failed to issue a ruling on his claim that his transfer violated the terms of the contract between the Government and CoreCivic. Both of these errors, however, are ultimately harmless. Moreover, the Superior Court committed no error when it held that Gillette failed to provide sufficient information to allow it to consider his ineffective assistance of counsel claim. Accordingly, we affirm the Superior Court's October 29, 2020 order.

Dated this 7th day of September, 2021.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Natasha Illis
Deputy Clerk

Dated: September 7, 2021