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## Clark v. State Respondent's Brief Dckt. 38107

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

WILLIAM EDWARD CLARK,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

NO. 38107

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF IDAHO

HONORABLE JOHN H. BRADBURY  
District Judge

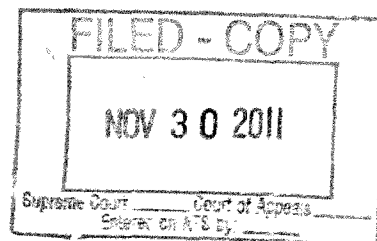
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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	3
ARGUMENT .....	4
Clark Has Failed To Show Clear Error In The District Court's Factual Findings .....	4
A.    Introduction.....	4
B.    Standard Of Review .....	4
C.    Clark Has Failed To Show That The District Court's Factual Findings Are Not Supported By Sufficient Evidence .....	5
CONCLUSION .....	7
CERTIFICATE OF MAILING .....	7

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Aragon v. State</u> , 114 Idaho 758, 760 P.2d 1174 (1988) .....	5
<u>Cowger v. State</u> , 132 Idaho 681, 978 P.2d 241 (Ct. App. 1999) .....	5
<u>Davis v. State</u> , 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).....	5
<u>Estes v. State</u> , 111 Idaho 430, 725 P.2d 135 (1986).....	4
<u>Gibson v. State</u> , 110 Idaho 631, 718 P.2d 283 (1986) .....	5
<u>Hill v. Lockhart</u> , 474 U.S. 52 (1985).....	5
<u>Mata v. State</u> , 124 Idaho 588, 861 P.2d 1253 (Ct. App. 1993).....	4
<u>McKinney v. State</u> , 133 Idaho 695, 992 P.2d 144 (1999).....	4
<u>Murray v. State</u> , 121 Idaho 918, 828 P.2d 1323 (Ct. App. 1992).....	5
<u>Padilla v. Kentucky</u> , ____ U.S. ____, 130 S.Ct. 1473 (2010) .....	6
<u>Peterson v. State</u> , 139 Idaho 95, 73 P.3d 108 (Ct. App. 2003) .....	7
<u>Roe v. Flores-Ortega</u> , 528 U.S. 470 (2000).....	6
<u>State v. Bingham</u> , 116 Idaho 415, 776 P.2d 424 (1989).....	5
<u>State v. Shackelford</u> , 150 Idaho 355, 247 P.3d 582 (2010).....	5
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	5
 <u>RULES</u>	
I.C.R. 57(c).....	4

## STATEMENT OF THE CASE

### Nature Of The Case

William E. Clark appeals from the denial of his petition for post-conviction relief.

### Statement Of The Facts And Course Of The Proceedings

Clark petitioned for post-conviction relief from his convictions for leaving the scene of an injury accident and injury to children, alleging ineffective assistance of counsel. (R., pp. 1-5.) The court appointed counsel to represent Clark (R., p. 11), the state answered (R., pp. 14-15), and the case proceeded to evidentiary hearing (R., p. 16).

At the hearing Clark testified that his criminal defense counsel tried to get him to take a plea agreement from the beginning. (8/26/10 Tr., p. 8, L. 4 – p. 10, L. 5.) He eventually did accept a plea agreement and pled guilty to the two felonies, but testified he did not believe he was guilty and only entered the plea because he believed his attorney was not prepared for trial. (8/26/10 Tr., p. 11, L. 8 – p. 12, L. 6; p. 15, Ls. 16-23; p. 17, Ls. 14-24.) He testified that jail records showing that counsel had visited with him more than three times were wrong; that he was never shown the discovery in the criminal case; and that counsel would not accept his calls from the jail. (8/26/10 Tr., p. 10, L. 6 – p. 11, L. 7; p. 12, L. 7 – p. 13, L. 16; p. 21, L. 11 – p. 22, L. 10.)

The state presented evidence that in fact counsel had visited Clark in the jail nine times prior to acceptance of the plea agreement. (8/26/10 Tr., p. 47, L. 6 – p. 49, L. 14; State's Exhibit B.) Trial Counsel for Clark, Jonathon Hallin,

testified that he was representing Clark on five different criminal cases involving probation violations and new charges. (8/26/10 Tr., p. 57, L. 14 – p. 59, L. 18.) Hallin acknowledged that he did discuss a plea bargain with Clark on their first meeting on this particular case, prior to the preliminary hearing, but that was because the prosecutor offered a plea agreement and he had a duty to discuss it with his client. (8/26/10 Tr., p. 59, L. 19 – p. 61, L. 21.) He testified that although he had no specific memory in this case, it was his standard practice to both provide a copy of discovery to his client and to go over discovery in a meeting with the client. (8/26/10 Tr., p. 63, L. 7 – p. 64, L. 11.) Hallin testified that his conversations with Clark were often unproductive because Clark was uncooperative and lied to him. (8/26/10 Tr., p. 71, L. 11 – p. 73, L. 1.) The court also took judicial notice of the criminal file. (9/2/10 Tr., p. 14, L. 14 – p. 15, L. 1.)

The district court found that Clark was not credible. (9/2/10 Tr., p. 18, Ls. 6-13; p. 20, L. 10.) It concluded that Clark's claims of ineffective assistance of counsel were disproved by the evidence. (9/2/10 Tr., p. 17, L. 23 – p. 20, L. 23.) Based on these findings, the district court denied the petition. (R., pp. 16-17.) Clark filed a notice of appeal timely from the district court's order. (R., pp. 18-19.)

## ISSUE

Clark states several issues on appeal at page 9 of the Appellant's brief.

The state rephrases the issue as:

Has Clark failed to show clear error in the district court's factual findings?

## ARGUMENT

### Clark Has Failed To Show Clear Error In The District Court's Factual Findings

#### A. Introduction

Clark alleged that his counsel was ineffective for not adequately communicating with him such that he entered a guilty plea because he did not believe his counsel was ready for trial. (R., pp. 1-5.) He presented almost no actual evidence of his claim, and what little evidence he did present was rejected by the district court as either not credible or disproved by other evidence. (9/2/10 Tr., p. 17, L. 23 – p. 20, L. 23.) On appeal he merely claims facts contrary to those found by the distinct court. (See generally Appellant's brief.) Clark has failed to show clear error in the district court's factual findings.

#### B. Standard Of Review

A post-conviction relief petitioner bears the burden of proving by a preponderance of the evidence all of the factual allegations upon which his request for post-conviction relief is based. Idaho Criminal Rule 57(c); Estes v. State, 111 Idaho 430, 438, 725 P.2d 135, 143 (1986); Mata v. State, 124 Idaho 588, 591, 861 P.2d 1253, 1256 (Ct. App. 1993). When reviewing a district court's denial of post-conviction relief following an evidentiary hearing, this Court must defer to the district court's findings of fact unless they are clearly erroneous. McKinney v. State, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999). This Court freely reviews the district court's application of relevant law. Id.



C. Clark Has Failed To Show That The District Court's Factual Findings Are Not Supported By Sufficient Evidence

A petitioner seeking relief on a claim of ineffective assistance of counsel must prove “that his counsel was deficient in his performance and that this deficiency resulted in prejudice.” Murray v. State, 121 Idaho 918, 922, 828 P.2d 1323, 1327 (Ct. App. 1992) (citing State v. Bingham, 116 Idaho 415, 776 P.2d 424 (1989)). To establish deficient performance the petitioner must overcome a strong presumption that counsel performed within the wide range of professional assistance by proving trial counsel's actions fell below an objective standard of reasonableness. State v. Shackelford, 150 Idaho 355, \_\_\_, 247 P.3d 582, 609 (2010); Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). To meet this burden “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish prejudice, a defendant must prove a reasonable probability that, but for counsel’s deficient performance, the outcome of the proceeding would have been different. Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988); Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999). When the alleged deficiency involves counsel’s advice in relation to a guilty plea, “in order to satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 58 (1985) (footnote and citations omitted). “Moreover, to obtain relief on this type of claim, a

claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1473, 1485 (2010) (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000)).

Clark has failed to show clear error in the district court's factual finding that counsel did not render deficient performance. The court found Clark not credible, and the other evidence showing that Clark was aware of the evidence against him and made a voluntary and rational decision to plead guilty was overwhelming. (9/2/10 Tr., p. 16, L. 24 – p. 20, L. 17.)

In addition, Clark never presented any evidence that would have met his burden of proof as to prejudice, even had it been deemed credible by the trial court. (9/2/10 Tr., p. 20, Ls. 17-22.) Clark never testified he would have insisted on going to trial, stating only that he would not have taken the plea agreement because he did not believe he did the crime because he had no recollection of the events leading to the charges and did not believe the state's evidence sufficient. (8/26/10 Tr., p. 17, L. 14 – p. 18, L. 21.) There was no claim of any exculpatory evidence that could have been presented at trial and the trial court found the evidence of his guilt, presented at the preliminary hearing and a probation violation hearing, overwhelming. (9/2/10 Tr., p. 18, L. 13 – p. 19, L. 13; p. 20, Ls. 1-5.)

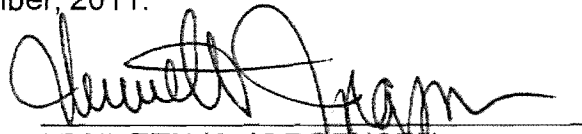
On appeal Clark challenges the district court's factual findings based on credibility. The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters

solely within the province of the district court. Peterson v. State, 139 Idaho 95, 97, 73 P.3d 108, 110 (Ct. App. 2003). As a matter of law Clark has failed to show error in the denial of his petition for post-conviction relief.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying post-conviction relief.

DATED this 30th day of November, 2011.




KENNETH K. JORGENSEN  
Deputy Attorney General

#### CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of November, 2011, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

WILLIAM EDWARD CLARK  
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KKJ/pm