

3-14-2012

## Cobler v. State Respondent's Brief Dckt. 38625

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"Cobler v. State Respondent's Brief Dckt. 38625" (2012). *Not Reported*. 228.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/228](https://digitalcommons.law.uidaho.edu/not_reported/228)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

BRIAN COBLER,	)	
	)	
Petitioner-Appellant,	)	NO. 38625
	)	
vs.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

---

**BRIEF OF RESPONDENT**

---

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

---

**HONORABLE MICHAEL R. MCLAUGHLIN**  
District Judge

---

**LAWRENCE G. WASDEN**  
Attorney General  
State of Idaho

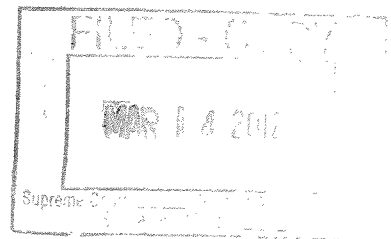
**PAUL R. PANTHER**  
Deputy Attorney General  
Chief, Criminal Law Division

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

**ATTORNEYS FOR  
RESPONDENT**

**BRIAN C. COBLER**  
IDOC #85525  
ICC  
PO Box 70010  
Boise, ID 83707

**PRO SE  
PETITIONER-APPELLANT**



## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE CASE .....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUES.....	3
ARGUMENT .....	4
I.    Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding He Had Failed To Prove Any Legally Viable Post-Conviction Claim That The Police Had Violated His Rights.....	4
A.    Introduction .....	4
B.    Standard Of Review.....	5
C.    Claims That Police Obtained Statements In Violation Of Miranda Warnings Or Through Coercion Must Be Brought In The Criminal Proceedings And Were Not Proper Post-Conviction Claims.....	5
II.    Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding Cobler Failed To Prove By A Preponderance Of Evidence His Claims That Trial Counsel Provided Ineffective Assistance Of Counsel Regarding The Guilty Plea .....	7
A.    Introduction .....	7
B.    Standard Of Review.....	8
C.    Cobler Has Failed To Show That He Presented Evidence To Sustain His Claims, Much Less That The District Court Erred In Concluding He Had Not Met His Burden Of Proof .....	8

III.	Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding He Had Failed To Prove Violations At Sentencing Of His Rights To Counsel, Due Process And Equal Protection .....	13
A.	Introduction .....	13
B.	Standard Of Review.....	14
C.	Cobler Has Failed To Show Error In The Rejection Of His Claims Of Constitutional Error At Sentencing .....	14
CONCLUSION .....		16
CERTIFICATE OF MAILING.....		17

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Curless v. State</u> , 146 Idaho 95, 190 P.3d 914 (Ct. App. 2008).....	5, 14
<u>Davis v. State</u> , 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).....	9
<u>Estes v. State</u> , 111 Idaho 430, 725 P.2d 135 (1986).....	8
<u>Farrell v. Board of Com'rs, Lemhi County</u> , 138 Idaho 378, 64 P.3d 304 (2002) ...	6
<u>Gibson v. State</u> , 110 Idaho 631, 718 P.2d 283 (1986) .....	9
<u>Hill v. Lockhart</u> , 474 U.S. 52 (1985).....	9
<u>Hoffman v. State</u> , 125 Idaho 188, 868 P.2d 516 (Ct. App. 1994) .....	6
<u>Larkin v. State</u> , 115 Idaho 72, 764 P.2d 439 (Ct. App. 1988) .....	5, 14
<u>Mitchell v. State</u> , 132 Idaho 274, 971 P.2d 727 (1998).....	5, 14
<u>Nellsch v. State</u> , 122 Idaho 426, 835 P.2d 661 (Ct. App. 1992) .....	5, 14
<u>Padilla v. Kentucky</u> , ___ U.S. ___, 130 S.Ct. 1473 (2010).....	9
<u>Peltier v. State</u> , 119 Idaho 454, 808 P.2d 373 (1991) .....	14
<u>Roe v. Flores-Ortega</u> , 528 U.S. 470 (2000).....	9
<u>Row v. State</u> , 135 Idaho 573, 21 P.3d 895 (2001) .....	16
<u>Rudd v. Rudd</u> , 105 Idaho 112, 666 P.2d 639 (1983).....	14
<u>Rueth v. State</u> , 103 Idaho 74, 644 P.2d 1333 (1982) .....	8
<u>Sanchez v. State</u> , 127 Idaho 709, 905 P.2d 642 (Ct. App. 1995).....	9
<u>Sanders v. State</u> , 117 Idaho 939, 792 P.2d 964 (Ct. App. 1990) .....	5, 8, 14
<u>Smith v. State</u> , 146 Idaho 822, 203 P.3d 1221 (2009) .....	14
<u>State v. Charboneau</u> , 116 Idaho 129, 774 P.2d 299 (1989).....	8

<u>State v. Cobler</u> , 148 Idaho 769, 229 P.3d 374 (2010) .....	1
<u>State v. Ewell</u> , 147 Idaho 31, 205 P.3d 680 (Ct. App. 2009) .....	5
<u>State v. Gallipeau</u> , 128 Idaho 1, 909 P.2d 619 (Ct. App. 1994).....	7
<u>State v. Goodwin</u> , 131 Idaho 364, 956 P.2d 1311 (Ct. App. 1998).....	5
<u>State v. Miller</u> , 151 Idaho 828, 264 P.3d 935 (2011) .....	6
<u>State v. Mowrey</u> , 128 Idaho 804, 919 P.2d 333 (1996) .....	6
<u>State v. Stradley</u> , 127 Idaho 203, 899 P.2d 416 (1995).....	14
<u>State v. Zichko</u> , 129 Idaho 259, 923 P.2d 966 (1996) .....	15
<u>Stewart v. Sun Valley Co.</u> , 140 Idaho 381, 94 P.3d 686 (2004) .....	6
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	8
<u>Stuart v. State</u> , 118 Idaho 865, 801 P.2d 1216 (1990) .....	5, 14

## **STATUTES**

I.C. § 19-4901(b) .....	6
I.C. § 19-4907 .....	5, 14

## **RULES**

I.C.R. 57(c).....	8
-------------------	---

## STATEMENT OF THE CASE

### Nature Of The Case

Brian C. Cobler appeals from the denial of his petition for post-conviction relief after an evidentiary hearing.

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

Cobler “pleaded guilty to one count of sexual battery of a minor, sixteen or seventeen years of age, based on charges that Cobler and his wife had maintained a sexual relationship with a seventeen-year-old girl.” State v. Cobler, 148 Idaho 769, 771, 229 P.3d 374, 376 (2010). He initiated the instant case by filing a petition for post-conviction relief. (R., pp. 4-9.) In his petition he alleged violations of his rights by the police (R., p. 5), ineffective assistance of counsel (R., pp. 5, 7-8), and due process and equal protection violations in sentencing (R., p. 6). The district court granted Cobler’s motion for appointment of counsel. (R., pp. 57-59, 62.)

The state filed an answer. (R., pp. 82-89.<sup>1</sup>) The matter then proceeded to evidentiary hearing. (See generally Tr.) The district court dismissed several of the claims after Cobler presented his evidence. (Tr., p. 47, L. 18 – p. 59, L. 2.) The trial proceeded to the defense case on claims related to ineffective assistance of counsel. (Tr., p. 59, Ls. 3-14.) After hearing testimony from Cobler’s former trial counsel the district court denied relief on those claims as

---

<sup>1</sup> The state also filed a motion for summary dismissal (R., pp. 92-98), but the court proceeded to evidentiary hearing without ruling on the state’s motion (Tr., p. 1, L. 5 – p. 2, L. 1).

well. (Tr., p. 84, L. 18 – p. 86, L. 24; R., p. 136.) Cobler filed a timely notice of appeal. (R., pp. 137-40.)



## ISSUES

Cobler's statement of the issues on appeal can be found in the Appellant's brief at pages 15 through 16. They are not repeated here due to their length.

The state rephrases the issues as:

1. Has Cobler failed to show on appeal that the district court erred by concluding he had failed to prove any legally viable post-conviction claim that the police had violated his rights?
2. Has Cobler failed to show on appeal that the district court erred by concluding he had failed to prove by a preponderance of evidence that his trial counsel was ineffective in relation to Cobler's guilty plea?
3. Has Cobler failed to show on appeal that the district court erred by concluding he had failed to prove by a preponderance of evidence his claims of violations of his rights to counsel, due process and equal protection at sentencing?

## ARGUMENT

### I.

#### Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding He Had Failed To Prove Any Legally Viable Post-Conviction Claim That The Police Had Violated His Rights

##### A. Introduction

Cobler alleged several violations of his rights by the police. Specifically, he alleged that the police had violated his due process rights by failing to inform him why he had been arrested (R., p. 5, ¶ 7(a1)); questioning him after he had invoked his right to counsel (R., p. 5, ¶¶ 7(a2) and (a5)); and coercing a statement from him by leaving on tight handcuffs and not allowing him to use the bathroom (R., p. 5, ¶¶ 7(a3) and (a4)). He testified at the evidentiary hearing that police refused to tell him why he had been arrested, interrogated him despite his requests for a lawyer, and left him in handcuffs for five or six hours. (Tr., p. 3, L. 22 – p. 5, L. 16.) The court dismissed these claims as inappropriate in post-conviction proceedings because they should have been brought in the underlying criminal proceedings. (Tr., p. 49, L. 24 – p. 50, L. 12; p. 58, Ls. 2-7.) On appeal Cobler again asserts that his rights were violated, but does not address the district court's determination that such claims are not properly brought in post-conviction proceedings under the facts of this case. (Appellant's brief, pp. 18-28.) Cobler has failed to show error on appeal because he has not challenged the actual basis for the court's ruling. Even if he had, review shows the ruling to have been correct.

B. Standard Of Review

A petitioner seeking post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations upon which his claims are based. I.C. § 19-4907; Stuart v. State, 118 Idaho 865, 801 P.2d 1216 (1990); Curless v. State, 146 Idaho 95, 97, 190 P.3d 914, 916 (Ct. App. 2008). When the district court conducts an evidentiary hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the application of the relevant law to those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-730 (1998); Curless, 146 Idaho at 97, 190 P.3d at 916; Nellsch v. State, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992). A trial court's decision that a post-conviction petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990); Larkin v. State, 115 Idaho 72, 74, 764 P.2d 439, 441 (Ct. App. 1988).

C. Claims That Police Obtained Statements In Violation Of *Miranda* Warnings Or Through Coercion Must Be Brought In The Criminal Proceedings And Were Not Proper Post-Conviction Claims

If a district court makes a ruling that is not challenged on appeal, the appellate court will affirm on the unchallenged basis. See State v. Goodwin, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998); State v. Ewell, 147 Idaho 31, 34, 205 P.3d 680, 683 (Ct. App. 2009). Here Cobler has not challenged the district court's ruling that, under the facts of this case, Cobler may not challenge the admissibility of his statements for the first time in post-conviction proceedings. Thus, Cobler has failed to meet his appellate burden of showing

error. Stewart v. Sun Valley Co., 140 Idaho 381, 384, 94 P.3d 686, 689 (2004) ("Error is never presumed on appeal and the burden of showing it is on the party alleging it." (quotations omitted)); Farrell v. Board of Com'rs, Lemhi County, 138 Idaho 378, 390, 64 P.3d 304, 316 (2002) (appellant carries burden of showing error on record and error never presumed); State v. Mowrey, 128 Idaho 804, 805, 919 P.2d 333, 334 (1996) (appellant has burden of showing error in record).

Even had Cobler tried to meet his appellate burden of showing error, the record shows he could not have succeeded. The remedy available under the Uniform Post-Conviction Procedure Act ("UPCPA") "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction." I.C. § 19-4901(b). In addition, an "issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings" except under very limited circumstances. I.C. § 19-4901(b). The plain language of these statutory provisions indicates that matters that could and should have been addressed in the criminal case or on direct appeal are not properly brought under the UPCPA. See Hoffman v. State, 125 Idaho 188, 190-91, 868 P.2d 516, 518-19 (Ct. App. 1994) (refusing to consider issues that should have been raised on direct appeal).

The time to move to suppress evidence for alleged violations of law by the police is in the trial court before any determination of guilt. When Cobler entered his guilty plea he waived any challenges to the state's ability to present certain evidence (such as his statements). State v. Miller, 151 Idaho 828, 264 P.3d 935

(2011) (guilty plea waives non-jurisdictional defects); State v. Gallipeau, 128 Idaho 1, 6, 909 P.2d 619, 624 (Ct. App. 1994) (“By obviating the State’s burden to prove the charge, a guilty plea waives any issue as to the admissibility of evidence upon which the State might have relied.”). Having waived challenges to the admissibility of his statements to police in the underlying criminal case, Cobler bore the burden in post-conviction of demonstrating that there were legitimate grounds for challenging that waiver that he could not have asserted in the criminal case. Because Cobler failed to do that, the district court properly concluded that the UPCPA did not provide a legal mechanism to litigate Cobler’s claims of *Miranda* violations.<sup>2</sup>

## II.

### Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding Cobler Failed To Prove By A Preponderance Of Evidence His Claims That Trial Counsel Provided Ineffective Assistance Of Counsel Regarding The Guilty Plea

#### A. Introduction

Cobler alleged that his counsel was ineffective for conspiring with the prosecutor (R., p. 5, ¶ 7(b1), p. 8, ¶ 9(k)) and failing to “advise [him] of his rights” (R., p. 7, ¶ 9(a)), “cross examine all evidence and statements” (id., ¶ 9(b)), “object to [Cobler’s] guilty plea” (id., ¶ 9(c)), “advise [Cobler] of the rule 11 procedure” (id., at ¶ 9(d)), “build a defense” (id., at ¶ 9(e)), “move to suppress all

---

<sup>2</sup> In rejecting Cobler’s claims of ineffective assistance of counsel for failing to move to suppress his statements to the police the district court found that Cobler had failed to demonstrate that, even if a suppression motion would have been successful, Cobler would not still have entered a plea and insisted on going to trial because the state had strong evidence even without the statements. (Tr., p. 84, L. 18 – p. 85, L. 25.) Cobler’s claims thus also fail for lack of prejudice.

statements” by Cobler (*id.*, at ¶ 9(f)), and “make himself available” (R., p. 8, ¶ 9(j)). The district court rejected all these claims as unproven, either immediately after Cobler’s case-in-chief or after the state presented the testimony of Cobler’s trial counsel. (Tr., p. 48, L. 11 – p. 59, L. 14; p. 84, L. 18 – p. 86, L. 24.) Cobler claims he proved his allegations (Appellant’s brief, pp. 28-35), but application of the relevant law shows that Cobler has failed to show error.

B. Standard Of Review

A claim of ineffective assistance of counsel presents mixed questions of law and fact. A petitioner for post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations on which his claim is based. I.C.R. 57(c); Estes v. State, 111 Idaho 430, 436, 725 P.2d 135, 141 (1986). A trial court’s decision that the petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990). The credibility of the witnesses and the weight to be given to the testimony are matters within the discretion of the trial court. Rueth v. State, 103 Idaho 74, 644 P.2d 1333 (1982).

C. Cobler Has Failed To Show That He Presented Evidence To Sustain His Claims, Much Less That The District Court Erred In Concluding He Had Not Met His Burden Of Proof

In order to prove a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). An attorney’s

performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel's conduct is within the wide range of reasonable professional assistance. 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). 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 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)). Where the claim of ineffectiveness is failure to make a motion, the "conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the [*Strickland*] test." Sanchez v. State, 127 Idaho 709, 713, 905 P.2d 642, 646 (Ct. App. 1995).

Cobler alleged that his counsel was ineffective because he was conspiring with the prosecutor. (R., p. 5, ¶ 7(b1), p. 8 ¶ 9(k).) Cobler testified that he "believe[d]" his counsel conspired with the prosecution, although he acknowledged that the only evidence he had of that was his counsel's "lack of availability" and "[l]ack of attempting to carry out my requests." (Tr., p. 22, L. 10

– p. 23, L. 1.) This evidence does not show that his counsel’s performance was deficient. In addition, the only evidence of prejudice was the following exchange:

**Q.** Do you believe the outcome would be different?

**A.** I did.

(Tr., p. 23, Ls. 17-19.) Such was insufficient to prove that Cobler would not have pled guilty but instead would have insisted on going to trial but for the alleged deficiency. The district court properly found Cobler presented no competent evidence of either element he bore the burden of proving. (Tr., p. 50, L. 23 – p. 51, L. 3 (there was “no evidence” presented to support this claim).)

Cobler next alleged that his counsel was ineffective for failing to “advise [him] of his rights.” (R., p. 7, ¶ 9(a).) He presented no evidence regarding this claim. (See Tr., p. 2, L. 16 – p. 46, L. 2.) To the contrary, he generally admitted he knew his rights, either because of counsel or because they were explained to him in court. (E.g., Tr., p. 32, Ls. 6-19.) The district court properly concluded that Cobler’s testimony that he did understand his rights was preclusive of this claim and that there was no other evidence of prejudice. (Tr., p. 51, Ls. 4-24.)

Cobler alleged that his counsel was ineffective for failing to “cross examine all evidence and statements.” (R., p. 7, ¶ 9(b).) He testified that “[a]ll of the state’s witnesses” had testified untruthfully but counsel would not “address those issues.” (Tr., p. 13, L. 1 – p. 14, L. 24.) The district court concluded that Cobler had failed to demonstrate that any further inquiry would have produced evidence helpful to the defense. (Tr., p. 52, Ls. 7-13.) Cobler’s nebulous testimony presents no actual evidence of deficient performance because it fails



to show any objective shortcoming of counsel. In addition, there was no evidence the allegedly deficient cross examination played any role in the guilty plea and therefore no evidence of prejudice.

Cobler alleged that his counsel was ineffective for failing to “object to [Cobler’s] guilty plea.” (R., p. 7, ¶ 9(c).) The district court concluded Cobler presented no evidence that Cobler had ever informed his attorney that he felt any duress and found this claim unproven. (Tr., p. 52, L. 20 – p. 53, L. 1.) Review of the transcript shows Cobler presented no evidence regarding this claim. (See Tr., p. 2, L. 16 – p. 46, L. 2.)

Cobler alleged that his counsel was ineffective for failing to “advise [Cobler] of the rule 11 procedure.” (R., p. 7, ¶ 9(d).) He testified that his counsel did not tell him that I.C.R. 11 allowed a binding sentencing recommendation, but did not present any evidence of any scenario where that would have been relevant. (Tr., p. 14, L. 25 – p. 16, L. 15.) Rather, he testified only that if he had known of binding plea agreements that might have been something he “could pursue.” (Tr., p. 15, Ls. 8-15.) The district court properly concluded that there was no evidence that knowledge of binding Rule 11 guilty plea agreements would have changed the outcome of the proceedings. (Tr., p. 53, Ls. 9-12.)

Cobler alleged that his counsel was ineffective for failing to “build a defense.” (R., p. 7, ¶ 9(e).) He testified that he had discussed unspecified facts that would help the defense, but his counsel was not receptive. (Tr., p. 7, Ls. 5-21.) The district court concluded such general testimony failed to prove any defense that trial counsel in fact could have raised. (Tr., p. 53, L. 17 – p. 54, L.

2.) Because there is no evidence of an objective shortcoming or prejudice, this claim was properly rejected as unproven.

Cobler alleged that his counsel was ineffective for failing to “move to suppress all statements” by Cobler. (R., p. 7, ¶ 9(f).) He testified he told his attorney that there was one statement he made and that police had ignored his requests for counsel. (Tr., p. 10, Ls. 11-23.) The district court rejected this claim by Cobler after hearing testimony from trial counsel, which testimony he deemed more credible than Cobler’s, and concluded that there was neither deficient performance nor prejudice. (Tr., p. 84, L. 18 – p. 85, L. 25.) The record supports the district court’s analysis. Counsel testified that he reviewed the police reports and the audio recordings of the police interviews, and that if he thought there had been grounds for suppression he would have pursued such a motion. (Tr., p. 66, L. 17 – p. 67, L. 19; p. 68, Ls. 7-14; p. 75, L. 3 – p. 80, L. 7.) However, the primary reason that the motion was not pursued was that even without the statements the state could prove its case, and the state’s offer was a good one that they wished to take regardless of the potential for suppression of Cobler’s statements. (Tr., p. 64, L. 19 – p. 65, L. 17; p. 80, L. 8 – p. 81, L. 16; p. 82, L. 18 – p. 84, L. 7.) Cobler has failed to show any error on appeal.

Cobler alleged that his counsel was ineffective for failing to “make himself available.” (R., p. 8, ¶ 9(j)). He testified that he met with counsel “once or twice on the phone and once at the jail and every other time was when I came to court.” (Tr., p. 20, L. 24 – p. 22, L. 2.) The district court, however, found the attorney’s testimony of sufficient meetings more credible. (Tr., p. 85, Ls. 1-8; p.

86, Ls. 1-4.) Cobler presented no evidence that these meetings were insufficient or that he would have insisted on going to trial if his counsel had personally met more often with him. Cobler has failed to show error, especially given that the credibility determination of the district court is beyond the scope of appellate review.

Cobler has failed to show that he presented evidence sufficient to make a prima facie case, much less evidence so convincing that the district court should have ruled in his favor. Cobler has therefore failed to show error in the district court's determination that he failed to prove his claims of ineffective assistance of counsel regarding entry of his guilty plea.

### III.

#### Cobler Has Failed To Show On Appeal That The District Court Erred By Concluding He Had Failed To Prove Violations At Sentencing Of His Rights To Counsel, Due Process And Equal Protection

##### A. Introduction

Cobler also alleged several constitutional violations attendant to his sentencing. (R., pp. 6-7, ¶¶ 7(c), (d), (e), (f), (g), (h), 9(g), (h), (i).) These claims were dismissed by the district court at the conclusion of the case-in-chief. (Tr., p. 49, L. 24 – p. 50, L. 22; p. 54, L. 17 – p. 56, L. 22.) Cobler generally challenges the district court's rejection of his claims as unproven. (Appellant's brief, pp. 36-44, 57-63.) Review of the record and the application of the relevant law show no error by the district court.

B. Standard Of Review

A petitioner seeking post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations upon which his claims are based. I.C. § 19-4907; Stuart v. State, 118 Idaho 865, 801 P.2d 1216 (1990); Curless v. State, 146 Idaho 95, 97, 190 P.3d 914, 916 (Ct. App. 2008). When the district court conducts an evidentiary hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the application of the relevant law to those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-730 (1998); Curless, 146 Idaho at 97, 190 P.3d at 916; Nellsch v. State, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992). A trial court's decision that a post-conviction petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990); Larkin v. State, 115 Idaho 72, 74, 764 P.2d 439, 441 (Ct. App. 1988).

C. Cobler Has Failed To Show Error In The Rejection Of His Claims Of Constitutional Error At Sentencing

Procedural due process requires notice and a meaningful opportunity to be heard before deprivation of any property or liberty interest. Smith v. State, 146 Idaho 822, 829, 203 P.3d 1221, 1228 (2009); State v. Stradley, 127 Idaho 203, 210, 899 P.2d 416, 423 (1995) (citing Peltier v. State, 119 Idaho 454, 808 P.2d 373 (1991)); Rudd v. Rudd, 105 Idaho 112, 115, 666 P.2d 639, 642 (1983). Cobler claimed he was denied due process at sentencing because, he alleged, the trial court relied on inaccurate information (R., p. 6, ¶¶ 7(c), (d1); p. 7, ¶¶ 9(h),

(i)); Cobler was provided the PSI only 20 minutes before sentencing (R., p. 6, ¶ 7(d); p. 7, ¶ 9(g)); the prosecutor made untrue statements (R., p. 6, ¶ 7(e)); and the judge tried to end Cobler's marriage by statements made to his co-defendant wife (R., p. 6, ¶ 7(f)). The district court dismissed these claims finding that Cobler had failed to present any evidence that there were any inaccuracies that affected the sentence or that more accurate information would have been available at sentencing but for the alleged deficiencies. (Tr., p. 54, L. 17 – p. 56, L. 22.) On appeal Cobler has failed to cite to any inaccuracies he actually established by admissible evidence at the hearing on his petition. He has further failed to present any additional evidence that might have been presented at his sentencing to change the sentence. He has therefore failed to show error in the denial of his claims of due process violations at sentencing.

Cobler also alleged below that it violated equal protection to sentence his wife differently than him. (R., p. 6, ¶ 7(g).) Cobler's whole argument is that he "believes the state has discriminated against him due to his gender." (Appellant's brief, pp. 57-59.) Cobler has failed to present any applicable authority or cogent argument that would tend to support an equal protection argument, and has therefore waived this claim. State v. Zichko, 129 Idaho 259, 923 P.2d 966 (1996).

Finally Cobler alleged that the sex offender registration statute is being improperly applied to him because he did not commit a crime of violence. (R., p. 6, ¶ 7(h).) On appeal he claims that he is labeled a violent offender and that he cannot "prepare for his eventual release from prison." (Appellant's brief, pp. 62-

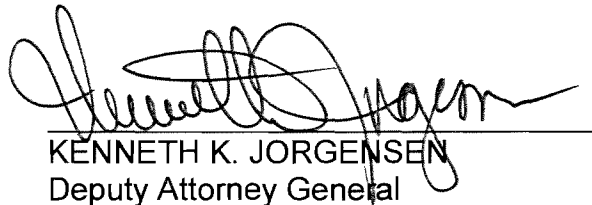
63.) Although it is unclear what Cobler is even talking about, it appears that he is challenging an action of the Department of Correction, the Sexual Offender Classification Board, or some other governmental agency, not the district court in the criminal case. Therefore, Cobler has not asserted a viable post-conviction claim. See Row v. State, 135 Idaho 573, 580, 21 P.3d 895, 902 (2001) (challenges to conditions of confinement must be brought under the Idaho Habeas Corpus and Institutional Litigation Procedures Act, not by a petition for post-conviction relief).

Cobler has made several challenges to the sentencing procedure but failed to show any error by the district court in rejecting those claims because they are unsupported by evidence or the applicable law.

#### CONCLUSION

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

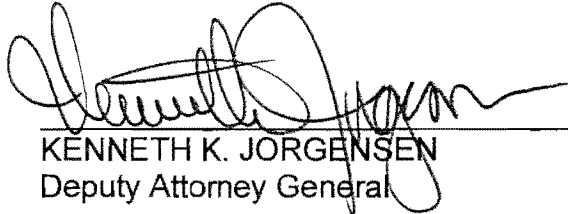
DATED this 14th day of March, 2012.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2012, 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:

BRIAN C. COBLER  
IDOC #85525  
ICC  
PO Box 70010  
Boise, ID 83707



KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm