

11-14-2011

## Dill v. State Appellant's Brief Dckt. 38979

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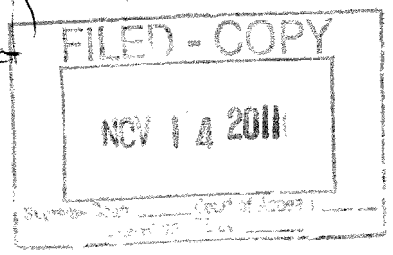
Michael S. Dill, x )  
Petitioner/Appellant, )

Case No. CV-2011-386  
Supreme Court # 38979

vs.

State of Idaho x )  
Respondent )

Appellants Brief



comes Now Michael S. Dill, petitioner/Appellant in the above  
entitled Appellants Brief.

I. Introduction

On February 14, 2011 Petitioner/Appellant Michael S Dill, filed a  
successive Petition and Affidavit for Post-Conviction Relief.  
See Dill v. State, CV-2011-386. The successive Petition asserted  
four grounds for relief: (1) the conviction or sentence is in violation  
of the U.S. Constitution or Idaho Constitution; (2) There exists  
evidence of material facts, not previously presented and heard that  
requires vacation of the conviction or sentence in the interest of  
justice; (3) subject to the provisions of § 19-4902 (b) through (f),  
Idaho Code the Petitioner is innocent of the offense; and (4) the  
Plea was not made knowingly or voluntarily. On May 4th, 2011  
Petitioner received an order from district court denying Petitioner  
motion for appointment of counsel. The court recognized at that  
time that the State had not argued "any" of Petitioner's allegations

OR claims on the Petition. Thereafter on May 19th, 2011 Petitioner received in the mail District Courts Decision and 30 Day Notice of Intent to Dismiss. On May 19th, 2011 Petitioner responded to the District Courts Decision and 30 Day Notice of Intent to Dismiss by mail. Thereafter on May 31st, 2011 District Court

severed on Petitioner by mail its decision of Dismissal of Successive Petition for Post-Conviction Relief, and Subject of Dismissal of Post-Conviction Relief giving Petitioner 42 days to file on appeal. Petitioner like his appeal on July 7th, 2011, along with a motion and affidavit for permission to Record on Partial Payment of Court Fees (Petitioner), and in Support for Appointment of Counsel. District Court replied on July 21st, 2011 approving Petitioner/Appellants Partial Payment of Court Fees, and Denying Appointment of Appellant Counsel. On July 26th, 2011 Clerk Records Due Date

was set by Idaho Supreme Court for September 30th, 2011. District Court filed on September 6th, 2011. The Supreme Court then set date for the Appellants Brief for November 17th, 2011.

## II. Argument

Petitioner contends that his Sixth and Fourteenth Amendments to the Constitution were violated. His rights under the Constitution of the State of Idaho, Declaration of Rights, Section 13 were also violated.

Petitioner/Appellants claims that his rights were denied to Appellate Brief of Page 7

him of all stages of the criminal proceedings. He claims that his guilty plea was not voluntarily given or intelligently given due to his psychiatric state of mind. He claims that not only was his plea not voluntarily or intelligently given, but that his continued use of the medication was continued to be given to him without his intellectual consent or evaluation from a professional subject to the provisions of Idaho Code § 19-2522. He claims that his attorney did not advise him of his rights to appeal or of his investigation of Petitioner/Appellants case. Petitioner/Appelland claims that his legal representation should have adequately have known Defendant's mental condition at the time of his plea. Petitioner/Appelland further claims that legal representation failed to object or sentencing due to his child's lack of being alerted on opportunity for the PSI to determine inaccuracies and that he failed to investigate facts, and to prepare a defense or call witnesses. See *David v. Hollins*, 201 F.3d 210, 216-226 (2nd Cir. 2001) Trial counsels failure to investigate, prepare a defense, to call and important fact witnesses and present a medical expert witness to dispute the state sexual abuse of a child case constituted ineffective assistance of counsel. *Thomas v. Lockhart*, 738 F.2d 304 (8th Cir. 1984) Trial counsels failure to investigate defendant's mental problems, to object courts and prosecutor of defendant's mental history a factor that may have affected plea negotiations and the sentence constituted ineffective assistance of counsel. *Crandell v. Bunnell*, 144 F.3d 1213 (7th Cir. 1998) Defense counsels failure to confer with defendant, to seek discovery, to investigate crime charged

or to interview witnesses, or to develop a working relationship with defendant in capital case amounted to incompetent representation and required appointment of substitute counsel. See also *Noland v. Dixon*, 808 F. Supp. 485 (W.D.N.C. 1995); *Hollines v. Estelle*, 569 F. Supp. 146 (W.D. Tex. 1983).

Furthermore Plaintiff's claims that his guilty plea was not made knowingly or intelligently we look to F.R.C.P. 11(b). See *United States v. Damon*, 191 F.3d 561, 565 (4th Cir. 1999) (Court must determine whether defendant's medication renders defendant incompetent to enter a guilty plea); *United States v. Rossillo*, 853 F.2d 1062, 1066 (2d Cir. 1988) (intoxicated or drugged defendant is not competent to enter a guilty plea); See *United States v. Villalobos*, 333 F.3d 1070 (9th Cir. 2003) also *United States v. Pena*, 311 F.3d 1152 (9th Cir. 2003). If a defendant indicates at the time of plea that the defendant has ingested drugs, the court must determine whether the defendant can nonetheless knowingly and intelligently enter a plea. *United States v. Damon*, 191 F.3d 561 (4th Cir. 1999) (court improperly failed to make further inquiry into effect of defendant medication on voluntariness of plea).

Moreover Petitioner/Appellant claims that he was denied access to his pre-sentence investigation report. F.R.C.P. 32(e) - Disclosing the report and recommendation. See *United States v. Petty*, 88 F.3d 1384 (9th Cir. 1996) (rule violated when defendant not given opportunity to review report with counsel). Petitioner/Appellant argues that all allegations are Plain Error on the States behalf, and counsels behalf we look to Rule

52(b) of F.C.R. - Plain Error Case Concept, In exceptional cases, the court will review errors that were not raised by defense counsel at the time they were committed. In order for plain error to warrant reversal, the facts of the case must indicate that the error was of such a magnitude that it undermines the integrity of the trial and caused a miscarriage of justice. Standards for Plain Error - Plain error is error that was not brought to the court's attention in a timely manner, but nonetheless is serious enough to warrant appellate review. In order to be plain error warranting court review, the error must meet the Olano test, see United States v. Olano, 507 U.S. 725, 736, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). The plain error test was recently reaffirmed by the Supreme Court in United States v. Marcus, - U.S. -, 130 S.Ct. 2159, 176 L.Ed.2d 1012 (2010). See also Puckett v. United States, 556 U.S. -, 129 S.Ct. 1423, 175 L.Ed.2d 266, 275 (2009). It requires that the error be: (1) An error, see United States v. Denkins, 367 F.3d 537, 543 (6th Cir. 2004); United States v. Thurston, 358 F.3d 51, 62-63 ~~(6th Cir. 2004)~~ (1st Cir. 2004) (Failure to raise statute of limitations was a forfeiture, not waiver; forfeited issues may be challenged under plain error standard). (2) That is plain, see United States v. Thompson, 82 F.3d 849 (9th Cir. 1996) ("plain" is synonymous with clear and obvious). (3) That affects substantial rights, see United States v. Olano, 507 U.S. 725, 736, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), also United States v. Smith, 232 F.3d 236, 243 (D.C. Cir. 2000) ("substantial rights inquiry of Rule 52(b)

MIRORS that of Rule 52(a), except that burden falls on the defendant to show prejudice). and (4.) That seriously affects the fairness, integrity, or public reputation of judicial proceedings see United States v. Padilla, 415 F.3d 211 (1st Cir. 2005) (en banc) (plain error is the type of error that undermines faith in the judicial system); United States v. Slatzie, 228 F.3d 1278, 1284 (11th Cir. 2000) (plain error applies when there is serious question as to the validity of the verdict or courts findings); United States v. Denogean, 79 F.3d 1010 (10th Cir.), cert. denied, 519 U.S. 856, 117 S.Ct. 154, 136 L.Ed.2d 99 (1996) (plain error to be applied when there has been a miscarriage of justice

### III. Conclusion

Where Plaintiff's allegations that he was not afforded legal competent, and effective assistance of counsel with claims of psychotropic drug inducement by the jailers during entire criminal proceedings without any investigation of Petitioner's mental instability or stability was miscarriage of justice. Petitioner asserts that if he had not had diminished capacities of mind during all proceeding he would have not Plead guilty. Petitioner was so induced on mind altering psychotropics that even counsel as he claims added to this miscarriage of justice by not informing him of his appellate rights, his rights to the Pre-sentence Investigation, and of his right to Effective Assistance of Counsel as Out-lined in the Sixth Amendment of the United States Constitution. However because as the State has yet to argue any point

petitioner alleges District Court refuses to entertain Petitioner's claims in the Second Successive Petition for Post-Conviction Relief, because it was not (A) raised in the First Petition, and (B) untimely. First in Petitioner's First Petition, Petitioner was not afforded representation, and is not a lawyer or defense counsel with any legal background so the facts Petitioner is asserting could not have been known at that time even with due diligence. Plaintiff as an indigent inmate with limited access to legal case law and applicable laws and rules has had to devulge years into researching material for this case, second is the timing again even due diligence is timely for an individual with no legal training or background. If Petitioner meets the Standard for F.C.R 52(b), and show miscarriage of justice, he will be able to bring forth witnesses, communicate with defense counsel, and prove his factual, and actual innocence with the aid of DNA evidence; finally without the illegal misrepresentation that Petitioner is a paranoid schizophrenic upon the state must induce on psychotropic medication without inquiry or investigation into Defendants mental history, or proper judicial review.

Michael S. Dill

11-09-11

Executed at Boise, Idaho

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