1-10-2013

Carle v. State Appellant's Brief Dckt. 40334

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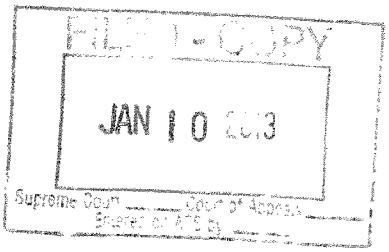
APPELLANT IN PRO ,SE

IN THE SUPREME COURT OF THE STATE OF IDAHO

PHILLIP R.L. CARLE)	CASE NO.2005-42
APPEALLANT)	Docket No 40334-2012
)	
VS.)	
)	
STATE OF IDAHO,)	
APPEALLE)	
)	



OPENING BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF SHOSHONE

HONORABLE FRED M.GIBLER
PRESIDING JUDGE

PHILLIP R.L. CARLE#24859
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Referenced Case Law and Usage

US v Ary. 518 F.3d 775 (10th Cir. 2008)

Because confidentiality is critical to the attorney-client privilege, it will be lost if the client discloses the substance of an otherwise privileged communication to the third party. **Pg 4 #3 & 4, Pg 5 #5, & Pg 8 #14**

Harris v US RR Retirement Board. 198 F.3d 139 (4th Cir 1999)

It is generally preferred that a blameless party not be disadvantaged by the procedural errors or neglect of his/her attorney. **Pg 5 #7 & 8, Pg 9 #17**

Belmontes v Brown. 414 F.3d 1094 (9th Cir 2005)

In criminal cases the prosecutions failure to disclose favorable evidence violates due process when the evidence is material. **Pg 5 #8, Pg 7 #11, Pg 9 #17**

US v WhiteHill. 532 F.3d 746 (8th Cir 2008)

Brady applies to exculpatory and impeachment evidence, whether or not the accused has specifically requested information. **Pg 5 #7 & 8, Pg 9 #17**

US v Gland. 517 F.3d 930 (7th Cir 2008)

Under Brady, the prosecution has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. **Pg 5 #8, Pg 9 #17**

Richter v Hickman. 521 F.3d 1222 (9th Cir 2008)

Under Brady and its progeny, the State violates due process when it suppresses or fails to disclose materially exculpatory evidence. **Pg 5 #7 & 8, Pg 7 #11, Pg 9 #17**

US v Garner. 507 F.3d 399 (6th Cir 2007)

Brady applies to the failure to disclose evidence affecting the credibility of a witness whose reliability may be determinative of guilt or innocence. **Pg 5 #7, Pg 6 #8, Pg 9 #17**

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US v Gil. 297 F.3d 93 (2nd Cir 2002)

Brady material must be disclosed in time for its effective use at trial. **Pg 5 #7, Pg 6 #8 & 10, Pg 7 #11, Pg 11 #28**

US v Smith. 534 F.3d 1211 (10th Cir 2008)

Pg 5 #7, Pg 6 #9 & 10, Pg 11 #28

1.) Brady's duty to disclose applies not only to prosecutors, but also to police and other government investigators.

2.) A defendant may base a Brady claim on a piece of material evidence not disclosed by an investigator, EVEN if the prosecutor did not know of the evidence.

US v Laurent. 607 F.3d 895 (1st Cir 2010)

Brady requires the prosecutor to produce exculpatory evidence to the defense and this could conceivably include information that someone, even a private citizen, had destroyed exculpatory evidence. **Pg 5 #7 & 8, Pg 6 #10, Pg 11 #28**

White v Hantzky. 494 F.3d 677 (8th Cir 2007)

For prisoners, meaningful access to the court requires prison authorities to assist prisoners in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in law. **Pg 9 # 18, Pg 12 #31 & 32**

Hartsfield v Nichols. 511 F.3d 826 (8th Cir 2008)

To prove actual injury, in a claim for deprivation of access to the courts, a prisoner must demonstrate that a non-frivolous legal claim had been frustrated or was being impeded. **Pg 4 #3, Pg 9 #18, Pg 12 #31 & 32**

Palmer v Dermitt. 102 Idaho 591, 635 P.2d 955 (1981)

Palmer asserted that counsel representing him in the district court on his petition for post conviction relief was ineffective because he deleted claims for relief which Palmer had included in his pro se petition. The Idaho Supreme Court reversed the dismissal of Palmer's second petition to allow consideration of the allegations, raised in Palmer's pro se petition but

omitted without his knowledge from the amended petition filed by counsel for Palmer. **Pg 4 #I**

Martinez v Ryan. 566 U.S. ___ (2012)

(Also with **Martinez v State**) The petitioner is entitled to effective assistance of counsel during all phases of court and post-conviction hearings. Failure to provide this counsel can be brouhgt as an issue in Federal Habeus Corpus. **Pg 4 #I**

Brady v Maryland. 373 U.S. 83 (1963)
Pg 6 #9

NOW COMES Phillip R.L. Carle, Pro Se, seeking appointment of counsel and a new trial for the reasons and upon the grounds as set forth herein.

(A). Petitioner was charged with numerous felonies in Case No. CR-F-02-35715 in the above entitled court.

(B). During the course of this action, in this case the defendant was charged with seven counts and was found Guilty of the following Felonies: Count I Rape, Count IV Rape, and Count V Forcible Sexual Penetration by use of a foreign object.

(C). A Jury trial was held in the above entitled court with Judge Gibler holding said trial.

(D). On Oct 20, 2003, the petitioner was sentenced on all three guilty verdicts to life with 25 years fixed on each count, with all sentences to run concurrent.

(E). The petitioner reserves the right to correct this document once the facts unfold so the correct EVIDENCE can be developed and the misconduct of the (prosecutor-sheriff deputies- and the public defender's office and the abandonment of the client and breach of Attorney client privilege.

(F). Carle claims that his conflict counsel Linda Payne who admitted to misconduct while working on this petitioner's case which allowed issues to be dismissed without being heard due to conflict with the attorney general office which imposed sanctions that affected Carle's petition for post-conviction. Carle was denied the right to write, call, or any form of communication. This did not allow Issues of Importance to be addressed. Had they been so addressed, there would have been no need to file this petition.

(G). There are still issues that were improperly developed due to distractions from the Attorney Generals office.

(H). The District Court realized these failures and dismissed with prejudice which holds the client responsible for the attorney's misconduct.

(I). The constitution requires that the defendant in a criminal trial be provided with a fair trial. Not merely a "good faith" trial, but a fair trial. The respondents may have been nothing more than police ineptitude, however, it can deprive the petitioner of their rights to present a full defense and that ineptitude did deny the petitioner of his rights to due process of law, the right to effective assistance of counsel. In this ADVERSARIAL system in which

the petitioner's counsel tests the prosecutor's case to ensure that the proceedings serve the function of establishing guilt or innocence while protecting the rights of the person charged , the defendant is entitled to a guiding hand of effective assistance of counsel in every step of the proceedings in which he has been charged. Palmer v Dermitt, Martinez v Ryan

1. On Oct 5th, 2002, petitioner invoked his rights to remain silent and to have an attorney present during questioning, and for all the (phases) of his investigations and hearings and trials. On 11/15/02, Jay Stergil filled in for Cossel on the petitioner's preliminary hearing. The petitioner attempted to talk to Stergil who refused to answer any questions from the petitioner's hearing. On March 10, 2003, there was a hearing on a (motion) for bond reduction, Ttp 11, line 10-11. The Petitioner was given the impression that Jay Stergil was representing him; However, this was the second time he was wrong. Stergil refused to advise the petitioner when asked about his rights about searching him without a 19-625 warrant of detention or warrant to search his motel room under "(EXEGENT)" circumstances.

2. The petitioner appeared in court and was informed that Cossel was going to be gone for a couple of weeks Ttp. 10, line 21-22. As the court is aware I'm going to be gone for a couple weeks. Ttp. 11, line 10-11, Mr. Stergil going to cover for this, so he'll be available. This was the first time that petitioner heard about him leaving. John had said that.

3. Mr. Stergil refused all forms of communication from the petitioner. He states evidentiary hearing Etp 251 line 23-25 "Mr Carle's family was deeply involved in this and needed to know a lot of things. and John was really concentrating on the trial and doing what you do, Etp 252, line 1-3 when you are first chair. I--I ran interference for Cossel. I dealt with his family. They had a lot of questions. I answered them as best I could. Etp 255, lines 1-3 "I do remember having met with him once, US v ARY & Hartsfield v Nichols

4. I think to explain that John not here stop sending us kites. Etp 255, line 2-3 Johns not here stop sending us kites, Etp. 281, line 19-20. and frankly it was kind of --no offence, Phillip but it was a brushoff. then this same attorney attempted to defend petitioner after refusing to talk or see the petitioner Etp 262 2-8 "but it was my argument that 1,2,3, counting method is a very common parenting practice. US v ARY

5. I brought in a book that was in my library that Michelle an I use-- I'm a father-- and it's called "Magic" and it details a disciplinary method that you state a consequence, and then you count to three. and again Etp 268 line 5-8. US v ARY

6. I remember the conversation very distinctly where the Investigator sat down, looked John and I in the eye and said "I am convinced that Carle is innocent" Etp 268 line 7-8

7. Both Sturgil and Cossel failed to inform the court about evidence that was not disclosed to the defense before the trial. I recall that one episode very, very well, that happened to be one of the times that John and I were caught completely flat-footed. That evidence, when it came forward, literally-- both John and I were amazed, but I would disagree that Cossel's performance was inadequate because, when Mr. Berg testified-- when Officer Berg testified that he black lighted the sheets and found nothing on them-- and this is one of the reasons that I remember it so clearly-- John and I was totally taken by surprise Etp 260, line 16-25. Harris V US RR Retirement Board, US V WhiteHill, Richter V Hickman, US V Garner, US V Gil, US V Smith, & US V Laurent

8. The State was testing the sheets with the black lights without informing the defense which could of led the counsel to test further evidence which would had the state disclose all testing that was performed in this case which would've made the state witness accountable for the perjured statements Ttp 234 line 10-12 and then required them to account for the tampering with evidence Ttp 237 line 1-25 / Ttp 238 line 1-5 under Brady VS Maryland the failure to disclose the testing of the sheets, the sheriff officers was moving evidence around the hotel room after the sheriffs office took control of the Motel room after the petitioner and the alleged victim were removed and then took pictures of the room and flushed evidence down the toilet. US v Laurent. Ttp 231 line 21-25 / Ttp 2342 line 1-3 after the defendant was removed, the officers were the only ones in the motel room. The State violated petitioner's rights to due process of law through its failure to allow the defense to call witnesses, as hostile if necessary, who were at the bar which the State claimed wanted nothing to do with this case Ttp 230 line 5-14, Harris V US RR Retirement Board, Belmontes V Brown, US V WhiteHill, US V Gland, Richter V H

Hickman, US V Garner, & US V Gil

9. The prosecutor's misconduct violated the petitioner's rights under the 14th ammendment of the constitution and the rules of discovery. Under the rules of discovery, petitioner is and was entitled to all evidence that is favorable to him (and) is material either to guilt or to the punishment or exculpatory evidence that does not show the defendant's innocent. **BRADY VS MARYLAND, 373 US 83, 87, 83ct, 1194, 1196-97, 10 l ed. 2ed 2d 215, 218, (1963).** It may simply weaken the prosecutor's case "Enpeachment" proposes. US V Smith

10. The State's Investigator allowed evidence to be destroyed, thereby violating petitioner's 14th amendment and the rules of discovery, and his rights to due process when it allowed evidence (ie substance in the toilet) to be photographed and then destroyed and then flushed without retrieving any samples and then allowed the state's witness Officer Steven Berg to diagnose the substance that only a "trained expert" would test using scientific equipment to base an analysis before claiming the composition of that substance which allowed the state witness Officer Steven Berg to explain away the lack of evidence of other interaction that could have taken place Ttp 231 line 21-25. US v Gil, US v Smith, & US v Laurent

11. The investigator, as a State witness, stated on the stand, "I personally scanned the linen with a black light looking for that evidence, and there was nothing, nothing showing." Cossel questioning- "so there was no semen in Christina?" State Witness: "according to the state lab that is correct." "And there was no semen on the linen in the motel room?" answer: "That's correct." Ttp 234 line 10-16. Jay Stergil stated that "he & Cossell" were caught flat footed at the State's omission of testing the sheets. Etp 260 line 16-25. Etp 261 line 1-5. Yet the State failed to inform the defense on the outcome of the test. Yet the State required petitioner to waive his rights to a speedy trial so the State could test the sheets on the promise that if they came back negative the charges would be dropped Ttp 567 line 6-11. The reason for a continuance was to get this evidence that was supposedly being processed. It was right before the (trial) "we found out that someone told the State not to process this material because it wouldn't be valuable, but defense was not told about that"! (yet the prosecutor never objected to the

statement) made by the defense Counsel while addressing the court. The State had the opportunity to object and failed to do so. Richter v Hickman, Belmontes v Brown, & US v Gil.

12. On October 5th, 2002, Petitioner was woken by Deputy Chaffin, who was attempting to wrap hair around Petitioner's genitals and then arrested and placed in a tyvek suit and placed in Deputy Notto's patrol car Ttp 126 line 14-15. After an hour and thirty-one minutes, petitioner was then being transported to the county jail. While en route, he was re-routed back to Shoshone County Hospital by the prosecutor for a penile swab Ttp 126 line 22-25. Petitioner was then led into the hospital emergency room and was informed that they were going to take the penile swab. Petitioner said "not without my attorney present" He was then grabbed and then placed on a gurney by four deputies and a swab was taken (there was no fighting or arguing) Petitioner simply said not without his attorney present, without any warrant of detention 19-625. or telephonic warrant, from any judge in violation of the 4th amendment.

13. Petitioner attempted to raise the issue of Deputy Chaffin wrapping the hair around his genitals with Sargent Kelso Ttp 126 line 15-16 Petitioner then attempted to raise this issue with Cossel at the jail, at court, and then at the evidentiary hearing. The prosecutor asked Deputy Chaffen the following questions Etp 244 line 1-12 Q: When he woke up on his bed in the motel room that morning, that you were wrapping a hair, Christina Daniel's hair, around his penis. Did you do that? A: I did not. Q: Did you see anyone else do that? A: I did not. Q: Was Tony Noto there while you were there? A: I left shortly after he showed up. Q: Did you see him do that? A: I did not. Q:To your knowledge, did anyone in law enforcement do that? A: No nobody that I know of. This was the extent of the State's investigation of misconduct of that officer the mere existence of the allegations of misconduct of the officer who was not called as a witness by the State or the defense after the complaint of the petitioner who was entitled to a hearing when he raised the complaint to his counsel who should have informed the sheriff's office and the prosecutor office of the allegations of misconduct of the officers at the motel.

14. The public defender's office has abandoned its client when attorneys refused to see, or speak to a client regardless of whose client it is (must a

client stand-up in court and start yelling at his attorney for not doing his job or that there is a conflict with his counsel) the defendant complained to the sheriff of that county only to get the reply that he will not investigate his officers. The prosecutor will not investigate the sheriff's officers. The public defender won't impeach the sheriff's deputies, even when evidence is moved or destroyed or not disclosed to the defense. US v ARY.

15. The Public Defender's office and Jay Stergil is chatting up the defendants case with Mrs. Carle and Lee & Kitrina Williams without the defendant's written permission. This is a violation of the attorney-client privilege. Etp 251 line 23-25 / Etp 252 line 1-11

16. Petitioner attempted to ask questions and complained to Jay Stergil, who stated that he intentionally blew-off petitioner, Etp 185 line 19-25, yet he then attempted to defend petitioner on the 1,2,3 issue by bringing in a child's book which actually had no bearing on the issues. Cossel attempted to address the issue properly Ttp 309 line 15-21 it's clearly the reason that Carle was treated the way he was int the jail and this phoney baloney, "we got to check to make sure you --your not going to lose any evidence " we've already heard testimony that Carle--the evidence was taken from him before he got to the public safety facility. but failed to listen to the tape of the night in question where the defendant said in the patrol car that he needed to urinate. This was on the tape but the public defenders refused to listen to the tape which would have shown that the intentions for the misconduct of the officers and the reason for the refusing to let the defendant use the bathroom so that the defendant would make a statement this tactic did create a hostile environment to provoke a statement and or action from the defendant to use in court to show this negative type of demeanor that was created by the sheriffs deputies. This was ineffective assistance.

17. Mr. Jay Stergil stated that Etp 250 line 10-11 I honestly couldn't tell you if he (John) spent ten years preparing this case or ten minutes. Etp 252 line 9-11 I really couldn't tell you what John's preparation was like. I know that it's safe to say that Jay Stergil did not prepare for defense nor have the skill necessary to defend the client. A first-year law student is trained to talk to the clients before going to court and, had he done so, the judge would've ruled in petitioner's favor. And as the judge states, he "believes that they did a good job with the material that they had." If you call not

testing the evidence and only relying on only the evidence that the prosecutor wants to give the defense. (So much for discovery!) Harris V US RR Retirement Board, Belimontes V Brown, US V WhiteHill, US V Gland, Richter V Hickman, & US V Garner

18. Mrs. Linda Payne failed to preserve issues of importance of the original U.P.C.P. when she went to the defender's evidentiary hearing due to her misconduct that created the department of corrections from allowing her to communicate with her client thereby failing to preserve the issues for her client. White V Hantzky & Hartsfield V Nichols.

19. Juror Clark, who was impaneled, stated that he would side with his sargent even if there were three other witnesses stating differently than his sargent thereby establishing an aura of prejudice and bent mind wherein the petitioner was denied a fair trial.

20. The Judge denied petitioner the right to exclude all witnesses when it allowed State's witnesses Tina Seese and Steve Berg to remain in the courtroom during opening statements and before they testified. The Judge and State actors also allowed the alleged victim to listen to all statements and thereby not subjecting her to questions about changes in prior statements.

21. The court commited prejudicial error in that there were no chambers records or that the defendant was not present for the hearings and arguments which are part of the judicial process, which denied the petitioner all rights to "the first, the fifth, and the fourteenth amendments" of the constitution.

22. The prosecutor misstated the facts when he showed pictures of the alleged victim who had been sleeping on the side of her face (ie. pillow face). Those weren't "marks from the assault" as he stated.

23. The prosecutor became a witness when he stated that mercifully for Christina, passed out from the effects of his drinking and that she finally was able to call 911.

24. Again the prosecutor played the "sympathy card" and became a witness for the State when he told the jury, the alleged victim was "mercifully rescued."

25. Trial counsel failed to object to inadmissible lay witness testimony. Ms. Maxwell, the director of the women's center, testified that she observed the complaining witness at the motel room, in the ambulence, and at the hospital. She testified that the witness' emotional condition and behavior

were consistent with other rape victims and there was nothing in the witness' condition and behavior which was inconsistent. However, trial counsel never objected to this testimony even though it was inadmissible opinion. Testimony by a lay witness: "However, the court should disregard lay witness testimony relating to the cause of a medical condition, as a lay witness is not competent to testify to such matters." It was deficient performance for trial counsel to fail to object to this evidence.

26. Trial counsel failed to object to evidence as to truthfulness of a witness. The alleged victim's counselor, Toni Jones, testified that she had seen the witness twenty-two times, but she had not seen anything to indicate "that [the witness] wasn't being entirely forthcoming" with her. Moreover, there was nothing about the witness that would lead her to believe that she wasn't telling the truth about this. Petitioner has alleged that this evidence was not admissible. However, again, defense counsel did not object to this testimony. Nor did he object when Mrs. Jones made the following statement: "and what I did find was that - Just things that helped it ring true was that she said, the details she had, her demeanor while talking, the look on her face when she would describe certain acts that were particularly horrifying to her. Each time we talked about it each time she told me, he story was consistent. It was consistent with the police report. So these things just added to her credibility for me." It was deficient performance for the defense counsel to fail to object to this testimony. The evidence about the prior consistent statement was inadmissible heresay. It was not admissible under I.R.E. 801(d)(1)(B) because there is no charge by petitioner of recent fabrication on part of the complaining witness. Moreover, the evidence that the counselor did not see anything to indicate the complaining witness was not being truthful was simply vouching for the credibility of the witness. This type of testimony is prohibited. "In general, expert testimony which does nothing but vouch for the credibility of another witness encroaches upon the jury's vital and exclusive function to make credibility determinations, and therefore does not 'assist the trier of the facts' as required by rule 702."

27. Petitioner's conflict counsel failed to raise and preserve issues as well as the apellant counsel. Counsel that was preserved in a brief prepared by and filed by Dennis Benjamin in the SUPREME COURT (S. Ct. N. 32356) which stated Apellant counsel's failure to raise issues of inadmissible expert

testimony and failure to raise that issue on appeal was deficient performance because that evidence was inadmissible hearsay. Dr. Berri Swansand was asked at trial whether she was knowledgeable about "the effects of alcohol consumption on the male penis and ejaculation," she testified that she was. However, when she was asked to describe "those effects," she said that she has spoken to Dr. Gates about the subject. Defense objected to the testimony about what Dr. Gates told Swansand but was overruled by the court. During the closing argument, the prosecutor used this hearsay evidence to explain why no ejaculate was found during the examination. Despite all this, the apellate counsel would not challenge the trial court's ruling on appeal. Not to raise this issue on appeal was deficient performance because that evidence was inadmissible hearsay. While I.R.E. 702 does allow an expert to testify as to specialized knowledge if it will assist the trier of facts, the rule does not permit the expert merely to recite what she was told by a different purported expert. To the contrary, such testimony is prohibited by general rule making hearsay inadmissible. I.R.E. 802. Apellate counsel should have raised this issue on appeal because the erroneus admission of the evidence unfairly permitted the State to explain away one of the main evidentiary deficiencies with this case.

28. The prosecutor withheld evidence from the petitioner which clearly showed that the State recycled the 911 tape which would have clearly showed that the dispatch officer lied under oath for the prosecutor and stated that the tape did not record according to her supervisor. Yet the State's defender never subpoenaed the supervisor as to the defect of the tape and to the re-taping of the alleged night in question. US v Gil, US v Smith, & US v Laurent.

29. The court allowed the prosecutor and the witness to discuss issues of alleged evidence that was not entered into evidence or the court room, thereby denying the defendant his rights to due-process according to the constitution of this United States.

30. A public defender is required to defend the client assigned to them by the firm or the contractee (ie. Shoshone County Public Defender's Office); However, the firm that the State contracted had abandoned the petitioner at the beginning and even stated so in the evidentiary hearing. (ie "a brush-off" as stated by Jay Stergil), thereby requiring him to discuss issues on the

phone and during visiting because there is no attorney for attorney client privilege. The prosecutor and the sheriff's office and the judge all allowed the public defender to abandon petitioner so they could tromp on petitioner's rights to counsel by saying the county has no funds, and it is against the A.B.A. standards.

31. Had the State not interfered with the attorney-client contact, the issues that are raised in this petition would not need to be raised because they would have been raised in the prior petition, A.U.P.C.P.-2005-42, because the counsel or the client would have been able to properly raise these issues. If the counsel would not have been intimidated by Paul Panther and all State actors. They even required petitioner to use an unprofessional form of communication through a third-party. To date, Greg Silvey of Star Idaho refuses to speak to petitioner, his client, because the Attorney General's office of the State Appellate Office has dictated the type of contact to be utilized. White v Hantzky & Hartsfield v Nichols.

32. Petitioner was consistently denied counsel by the State of Idaho and its employees. The State opened his mail and refused to allow him to speak with, write to, or call his counsel that was appointed to him by Judge Gibler in the First District Court of Shoshone County. They opened his legal mail then denied it. They even went as far as to state that he (the petitioner) did nothing wrong, but refused him all contact, opened and scanned his legal mail, then denied it and acted as if it's no problem, thereby denying attorney-client privileges which are protected under the U.S. constitution. Petitioner has never experienced this privilege. The court that appointed him counsel refused to enforce this privilege even during the trial. This shows the judges were of a bent mind toward the petitioner. White v Hantzky & Hatfield v Nichols.

33. To date, petitioner has been denied proper counsel. In fact, he has counsel that refuses to speak with him due to petitioner's conflict with the state appellate counsel, who stated that there is no conflict! Petitioner disagreed with Molly Husky and Eric Fredrickson. He believes that if the attorney Erik Fredrickson refused to raise issues that were raised during the 2003 trial, ct-30233, why should he give the attorney a chance to refuse to defend his issues that were properly preserved at trial? That is a conflict. A stupid decision and the client is responsible for the attorney's

actions/mistakes/lack of prep time/etc. He is entitled to trust his counsel, and if there is a conflict, then he is required to inform the court. The State seems to dictate who will defend each client and what strategies they will employ when defending the accused.

34. Petitioner wishes to inform the court that the petitioner is not trained in law and has no counsel to guide him in the proper preparation of these documents and is requesting counsel and an evidentiary hearing to address these issues properly.

35. Petitioner asks this court to vacate his sentence and set a date for a new trial.

Dated this 3rd day of
Month of [illegible]
Year 2012.

Phillip R. Carle

PHILLIP R. L. CARLE

LAURA ASHFORD
NOTARY PUBLIC
STATE OF IDAHO

Laura Ashford

[illegible] 23 2017

Commission Expires

CERTIFICATE OF MAILING

I, Phillip R. L. Carle, hereby state that a copy was sent by placing in institutional mail to the following on this, the ___ day of _____, 2012.

The Idaho Supreme Court

Lawrence Wasden
Idaho Attorney General
John McKinney
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, IDAHO 83720-0010

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_____
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