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Coleman v. State Appellant's Brief Dckt. 41080

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IN The Supreme Court of The State
of Idaho

Charles Sheldon Coleman
Petitioner-Appellant,

- vs -

The State of Idaho,
Respondant-Appellee

Supreme Court Docket
No. 41080-2013

District Court Case
No. 2013-3564

Initial Brief of The Petitioner
Appellant

Appeal from the District Court for the Fourth
Judicial District of The State of Idaho, in
and for the County of Ada

Honorable Melissa Moody
District Judge

Charles Coleman #97268
I.C.C.I POD 103-B
Idaho Correctional Center
P.O. Box 70010
Boise Id. 83707

Petitioner-Appellant Pro Se

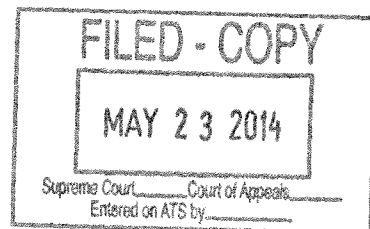


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Statement of The Case

Nature of The Case

On February 22, 2013 an Application for post-Conviction relief was filed in the Ada County division of the Fourth Judicial District. This is an appeal from the Honorable Melissa Moody's June 6th 2013 decision dismissing that same petition.

Relevant and Undisputed Material Facts:

On December 10, 2010 Charles Sheldon Coleman was sentenced on three(3) accounts of criminal Charges, CR-FE-2009-CO23454 Unlawful Exercise of Police Officer to an Aggregated term of Five(5) years in the Custody of The State Board of Corrections, with a minimum period of Confinement of two(2) years, followed by a Subsequent indeterminate period of custody not to exceed three(3) years, with said term to run concurrently with case no. CR-FE 2010-CO00305 (Note Robbery).

Second Account CR-FE-2010-CO00305 Robbery to an aggregated term of thirty one (31) years in the Custody of The State Board of Corrections, with a minimum period of confinement of six and one-half (6.5) years followed by an indeterminate period not to exceed twenty-four and one-half (24.5) years with said term to run concurrently with case no. CR-FE-2009-CO23454 Unlawful Exercise of Police Officer.

Police Officer.

Third Account CR-FE-2010-CC09317

Battery on an Officer to an aggregated term of Five (5) years in the Custody of The State Board of Corrections, with a minimum period of confinement of six (6) months, followed by a subsequent indeterminate period of custody not to exceed Four and one-half (4.5) years, with said term to run consecutive to case nos.

CR-FE-2009-0023454 Unlawful Exercise of a Police Officer and CR-FE-2010-CC00305 Robbery. ①

In which Coleman Pled guilty to all three accounts under the supervision of John Sutton at Sentencing. Thereafter Coleman pursued Post-Conviction appeal where counsel was appointed, limited discovery conducted and an Amended petition filed, answered, and a request for Summary judgement by the State placed before the Court.

On May 28th 2013 the District Court issued an Order conditionally dismissing the February 22, 2013 application for Post-Conviction relief and the April 10, 2013 Amended application for Post-Conviction relief. ②

Now, in the Idaho Supreme Court of Appeals

the Relevant facts are presented as follows:

Course of Relevant Prior proceedings:

Although originally pleading guilty to the three criminal accounts of Robbery, Battery and Unlawful Exercise of a Police Officer under the supervision of John Sutton at the time of sentencing on December 10, 2010. During Coleman's pre-sentencing proceedings he was recommended by the Courts to take a psychological evaluation pursuant to Idaho Code § 19-2522 for sentencing. Which the Mental Health assessment and GAIN I evaluation resulted in an inconsistency⁽³⁾. Pursuant to Idaho Rules of Evidence 201, the petitioner requests this court take judicial notice of the GAIN-I evaluation and Mental Health assessment included in the pre-sentence investigation report.⁽⁴⁾

Upon sentencing schedule I was asked a series of questions pertaining to understanding the Court rules in which my attorney at the time indicated to me with a whisper in ear that "I do" and to state verbatim "Say Yes." Cooperating with instructions from my attorney I said "Yes" to understanding all his questions about rules pertaining to pronouncing sentence.

In that same sentencing schedule I was UNAWARE and was never made aware that my Federal,

State, and Constitutional rights were then Violated of a Due Process along with the prejudicial nature of proceedings.

Here, this abbreviated rendition of the course of the relevant prior proceedings ends;

① R.VOLI pg. 000035

② R.VOLI pg. 000049

③ R.VOLI pg. 000046

④ R.VOLI pg. 000047

ISSUES PRESENTED ON APPEAL

I. DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT DENIED THE PETITIONER'S RIGHT TO A DUE PROCESS, THUS ABBROGATING THE STATE AND FEDERAL DUE PROCESS RIGHTS OF THE APPELLANT UNDER ARTICLE 1, SECTION 13 AND THE 14th AMENDMENT OF THE U.S. CONSTITUTION???

II. HAS THE DISTRICT COURT ERRED IN ITS CONCLUSION THAT THE PETITIONER DID NOT SUFFER A LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL WHICH VIOLATES THE APPELLANTS RIGHTS UNDER THE DUE PROCESS PORTIONS OF BOTH THE IDAHO AND U.S. CONSTITUTIONS???

General Standards of Review

A. Applicable Standards for Post-Conviction Petitions

A petition for post-Conviction relief proceeding is civil in nature, and accordingly requires proof by the preponderance of the evidence to prevail. See I.C. 91-19-4907; *Sivak v. State of Idaho*, 134 Idaho 641, 8 P.3d 636 (2000). Moreover with but few exceptions, it is the Idaho Rules of Civil Procedure which governs these types of matters. I.C.R. 57(b) *Ferrier v. State of Idaho* 135 Idaho 797, 25 P.3d 110 (2001)

An Application for post-Conviction differs; however from an ordinary civil complaint in that the petition must contain: (a) much more than "a short and plain statement of the claim as required under I.R.C.P. 8(a)(1); and (b) it must be verified with respect to those facts within the personal knowledge of the applicant, and those Affidavits records, or other evidence supporting its allegations are to be attached, or their absence explained." See: *Martinez v. State of Idaho*, 126 Idaho 813, 816, 892 P.2d 488, 491 (COA 1995), and I.C. 91-19-4903, respectively.

Said otherwise, the post-Conviction petitioner must make factual allegations showing each essential element of the claim, and a showing of admissible evidence must support those factual allegations. *Roman v. State of Idaho* 125 Idaho 644, 647, 873 P.2d 898, 901 (COA 1994)

Stone v State of Idaho, 108 Idaho 822, 824 702 P.2d 860, 862 (COA 1985); and Drapeau v State of Idaho, 103 Idaho, 612, 617, 651 P.2d 546, 551, (COA 1982). Still those factual allegations contained within the petition or its verified attachments are deemed to be true until controverted. Cooper v. State of Idaho, 96 Idaho 542, 531 P.2d 1187 (1975); Roman, at 647

Legal and Factual Arguments

I. The District Court abused its discretion when it denied the Petitioner's Right to Allocution, Thus abrogating the State and Federal Due Process Rights of the Appellant.

Standard of Review for a Due Process:

14th Amendment of the United States Constitution and Article I, § 13 of the Idaho Constitution mandates the violation of a Due Process.

Undisputable Material Facts

That portion of the prison file consisting of a copy of the 12-10-2010 Judgement of Conviction in each of the three (3) Ada County Court Cases was not readily available to me as contested in grievance proceedings. [See Exhibit A attached to Appellants index of Exhibits on Reply Brief.

If I had gotten the judgements sooner, I wouldn't have noticed the information in it, because I had counsel at sentencing, Direct Appeal Rule 35, and I was UNAWARE, that any false, or misleading information which is prejudicial in nature, existed just outside my reach.

Argument

Counsel during § 19-2510 proceedings during every stage, failed to notice the error (false, or misleading information in the Judgement of Conviction and The Notice of Transcript as Idaho Code § 19-2510 states that "When a defendant appears for judgement he must be informed by the court, or by the clerk, under its direction, of the nature of the indictment and of his plea, and the verdict if any thereon, and must be asked whether he has any legal cause to show, why judgement should not be pronounced against him."

In which I, the defendant was not given the opportunity to address the Court, with respect to the Honorable Judge Michael McLaughlin, only addressed my counsel, but failed to address me personally in transcript of Exhibit (C) page (6) ⁽⁷⁾ section 22, lines 3-12, but my Judgement of Conviction page (1) sections 23-25 continued on page (2) section 1-4 states Verbatim "The ⁽⁶⁾ defendant" and his counsel were then asked if they had any legal cause or reason to offer why judgement and sentence should not be pronounced against the defendant and if the defendant or his counsel wished to make a statement on behalf

- of the defendant, or to present any information to the court in Mitigation of punishment and the Court having accepted such statement and having found no legal cause or reason why judgement and sentence should not be pronounced against the defendant at this time; does render its judgement of Conviction as follows?" Verbatim in the transcript of Exhibit ⑦ (C) page (6) section 22, lines 3-12 "If your going to appeal this courts sentence, you have to file a written notice of Appeal 42 days from the date that the court signs the judgement and files that with the Clerks Office. So do you understand that aspect or that part of your Appeal Rights?" "The Defendant" Yes sir, "The Court" Mr. Sutton, do you know of any reason legal or otherwise, why the Court shouldn't pronounce sentence?"

This in itself was in Violation of my Due Process Rights because had I'd been given the opportunity to give my reason legal or otherwise why the Court shouldn't pronounce sentence, I the Defendant could have said to the Honorable Judge Michael McLaughlin that "I wasn't competent enough to understand what he was doing or what was going on around me at the time of sentencing, because I'm mentally impaired" as reported in my GAIN-I evaluation and Mental Health assessment during pre-sentence.

- ④ The Mental Health assessment diagnosed the petitioner with Polysubstance Dependence, Posttraumatic Stress Disorder and Personality Disorder NOS. The GAIN-I evaluation diagnosed the petitioner with Amphetamine Dependence, Major Depressive Disorder,

and Ruled Out Posttraumatic Stress Disorder.

Based upon the inconsistent diagnosis between the evaluations in a case where Mental Health is a Mitigating Factor, the petitioner's trial counsel should have requested a third and more thorough evaluation pursuant to Idaho Code § 19-2522

Failure to do so was deficient and prejudice to the petitioner since no accurate account of his Mental Health issues were presented to the Court.

As an Inmate were not allowed copies of those evaluations or the Pre-Sentence Reports and would like to ask the Court to see Exhibit E. (9)

Since then I've been diagnosed due to history of Mental instability and Family's history of Mental instability with Mood Disorder, Anxiety, (GAD/ Panic/ PTSD/ OCD/ ADHD) which presents that the defendant does have serious Mental Health issues by the prison MD. K. Khatain which I have a record directly from Khatain dated 5/26/12 see Exhibit D which I ask if credible enough the Courts take judicial notice of this record since this seems to be the only format the physician can release to inmates for their personal records. (8)

Cited in: See *Starkey v. State*, 91 Idaho 74, 415 P.2d 717 (1966); *Edelblute v. State*, 91 Idaho 469, 424 P.2d 739 (1967)

Non-Compliance with provisions of this section after plea of guilty, which is claimed to be involuntary and upon advice of inexperienced counsel, is erroneous; especially when arraignment, plea, and

Judgement were all had on the same day. See State v. Poglianich, 43 Idaho 409, 252 P.177 (1927)

Which is a few of the (false, or misleading) issues in my case that my counsel at every stage never advised me about and never raised issue during sentencing, direct appellant process, nor collateral proceedings and appeals thereafter.

That's why my argument surrounds the fact that the courts were in violation of Idaho Code § 19-2510 which results in my claims of Denied Due Process Rights and Ineffective Assistance of counsel for not representing my best interest rather allowing prejudicial proceedings without objection.

Counsel failed to notice, object, confer, nor otherwise advise me of my rights given the inadequate Rule 33 query presented by the Court out of time, I.C. § 19-2510 is explicit in legislative intent requiring the Court to address me personally inquiring whether I have any legal cause to show.

For these reasons, I believe I am entitled to a remand from the Idaho Court of Appeals to remand permitting re-sentencing after I am granted the right to speak.

I'm asking the Court to take judicial Notice of the 12-10-2010 sentencing hearing See Exhibit(C) (7)
The Notice of Transcript page(6) section 22, lines 3-12 in correlation with Exhibit(B) Judgement of Conviction page(1), section 23-25 which is continued on page(2) section 1-4 and Exhibit(A) which is Inadequate Access to Courts documents and Determine, hold, or Otherwise find that the language complained of in the Judgement correlated with the Transcripts do in (6) (5)

fact have false, or misleading information in it.

⑤ Exhibit A- Grievance Proceedings

⑥ Exhibit B- Judgement of Conviction page(1)
Section 23-25 continued on page(2) section 1-4

⑦ Exhibit C- The Notice of Transcript page(6)
Section 22, lines 3-12

⑧ Mental Health Diagnosis record per Mental
Health Physician K. Khatain MD
Exhibit D

⑨ Exhibit E Inadequate Access to PSI
report

⑤ Once I recently obtained a copy of the Judgement in the prison file, I began a series of timely concern forms that ended in a Return without Action, because the Access to Courts I require" is beyond the Idaho Department of Corrections Control. See Exhibit A in this Brief.

For these reasons the newly derived fact predicate raises a substantial doubt about the reliability of the entry of the plea of guilt may be withdrawn in cases where more severe information comes to light in documents once reviewed, that are not yet in my possession, and could not in the exercise of due diligence, have been presented earlier.

I'm asking the Courts to Determine, Hold, or Otherwise Find that the language in the Judgement resulted in prejudice during Direct Appeals were the Idaho Court of Appeals was mislead into an impermissible presumption of correctness where in fact the solid information about the

was unlawful and entitled me to re-sentencing.

Determine, hold, or otherwise find, that the sentencing court did in fact address Counsel by Name and not the defendant to ask § 19-2510 inquiry.

Order the defendant be brought back before the Court to present his legal cause and grant that I be produced for a hearing to allow me my Due Process right to explain the extent of my Mental incapacity suffered, and prejudice endured.

II. The District Court erred in its Conclusion that the Petitioner Did Not Suffer a Level of Ineffective of Assistance of Counsel which violates the Appellants Rights Under the Due Process portions of both the Idaho and United States Constitution.

Standard of Review For Ineffective Assistance of Counsel:

The right to assistance of Counsel for the criminal is inviolate and extends to the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) To evaluate claims of ineffective assistance of Counsel, the Supreme Court has established a two prong test: To prevail, the defendant must demonstrate that counsel's performance fell below the objective standard of reasonableness and that this deficient performance has prejudiced the defendant. *Id.* at 687-88.

In Considering whether counsel's performance was ineffective the Court must consider the totality of the circumstances and the collective impact of the acts or omissions. *Id.* at 689-690; The burden of proving these claims is normally met by showing that the "Outcome would have been different but for counsel's errors. See *Williams v. Taylor*, 529 U.S. 362, 391-93 (2000) in this respect

UNDISPUTED MATERIAL FACTS

1. Counsel failed to respectfully correct the Honorable Judge Michael McLaughlin at the time of sentencing to remind him that his client wasn't asked if he, personally had any reason why sentencing shouldn't be pronounced against him, then I Charles Sheldon Coleman the defendant would have been made aware that, that was an option and an opportunity I might have otherwise had a chance to introduce the extent of mitigating factors I suffer from that affect me mentally resulting in the lesser of a Sentence. See Exhibit (C) page (6) Sec. 22, lines 3-12.
2. Counsel failed to object or raise issue of inconsistent Mental Health and GAIN-I evaluations and never recommended a third and more thorough evaluation which is personally prejudice to the defendant / petitioner which would have shed light on the complications of determining whether accurate accounts of Coleman's incompetence was considered for sentencing pursuant Idaho Code § 19-2522 Failure to do so was deficient and prejudiced the petitioner since no accurate account of his Mental Health issues were presented to the Court.

CONCLUSION

The foregoing is reason enough to either reverse this case or remand the matter back to the District Court to withdraw Guilty Plea and allow for a re-sentencing for a more proper review of the issues, and a full and fair Right to a Due Process.

Dated this day of May 2014

Respectfully submitted by
Charles Sheldon Coleman
Charles Sheldon Coleman
Petitioner-Appellant pro se

Certificate of Service by Mailing

I, do hereby certify and affirm that
ON this 21st day of May 2014, I caused
a true and correct copy of the foregoing
Initial Brief of the Petitioner/Appellant

Charles Coleman

Charles Sheldon Coleman
Petitioner-Appellant pro se

Clerk of the Courts
Idaho Supreme Court
of Appeals

P.O. Box 83720
Boise Id. 83720-0101

In The Supreme Court of The State
of Idaho

Charles Sheldon Coleman,
Petitioner-Appellant,

- vs -

The State of Idaho,
Respondant-Appellee

Supreme Court Docket
No. 41080-2013

District Court Case
No. 2013-3564

Petitioner-Appellant Index of Exhibits
on Reply Brief

Appeal from the District Court for the
Fourth Judicial District of the State of
Idaho, in and for the County of Ada

Honorable Melissa Moody
District Judge

Charles Sheldon Coleman #97268

I.C.C.I POD 103 B

Idaho Correctional Center

P.O. Box 70010

Boise Id, 83707

Petitioner-Appellant prose

Charles Coleman #97268

I.C.C.I POD 103B

P.O. Box 70010

Boise Id, 83707

Petitioner-Appellant pro se

In The Supreme Court of The State
of Idaho

Charles Sheldon Coleman }
Petitioner-Appellant, }

-vs-

The State of Idaho }
Respondent-Appellee, }

Supreme Court Docket
No. 41080-2013

District Court Case No.
2013-3564

Petitioner-Appellants
Index of The Exhibits
in Support of Reply
Brief on Appeal

State of Idaho)
: ss
County of Ada)

Charles S. Coleman, after first being duly sworn
upon his oath, deposes and says:

1. AFFIANT is the petitioner-appellant pro se
in the above entitled cause of action, and,
that person who has compiled and indexed
the exhibits shown herein and after; and
that YOUR AFFIANT is of sufficient
knowledge and belief to attest that the
following exhibits are true and correct copies
of the original documents in these matters.

2. YOUR AFFIANT is submitting these exhibits with the express intent of introducing them as part of his supporting evidence on Appeal.

Dated this 21st day of May 2014

Charles Coleman
Charles S. Coleman
Petitioner-Appellant pro se

Index of Exhibits

Letter

Description

1. Exhibit A

Grievance Proceedings
Inadequate Access to legal
resources

2. Exhibit B

Judgement of Conviction
page(1) section 23-25
continued on page(2) section
1-4

3. Exhibit C

The Notice of Transcript
page(6) section 22, lines
3-12

4. Exhibit D

Mental Health Diagnosis
record per Mental Health
Physician K. Khatri M.D.

5. Exhibit E

Inadequate Access to
PSI report

EXHIBIT-A

IDAHO DEPARTMENT OF CORRECTION
Grievance Transmittal Form

Facility: ICA Date: 11-12-13
To: Offender Name: Coleman IDOC Number: 97268
Institution, Housing Unit, & Cell: I 103 B
From: Sgt Cheney ☒ Grievance Coordinator ☐ Other

The attached form is being returned without action being taken because:

- ☐ You did not submit the grievance within 30 days of the incident.
- ☐ You did not submit the appeal within 14 days of the review authority's decision.
- ☐ The form is not handwritten (it cannot be typed).
- ☐ The form is not legible.
- ☐ You did not include with the grievance an answered or signed *Offender Concern Form(s)* that shows your attempts to resolve the issue informally with applicable staff.
- ☐ You have three (3) open/active grievances (including appeals) in the system, which is the maximum number you are allowed.
- ☐ You have raised more than one specific issue.
- ☐ The grievance does not contain a reasonable and clear description of the problem.
- ☐ The grievance does not describe how you tried to resolve the issue informally.
- ☐ The grievance does not contain specific information such as dates, places, and names.
- ☐ Your description of the problem is not written in or within the appropriate area on the form. (Written comments must not exceed the space designated for writing comments.)
- ☐ The grievance is not written in a civil, concise, or understandable language; or it is not to the point. (Grievances cannot contain vague issues/complaints, personal attacks, or harass staff members.)
- ☐ You did not suggest a solution.
- ☐ You did not sign the form.
- ☐ You cannot submit your appeal until the grievance decision is rendered.
- ☐ The issue was previously grieved under grievance number: _____
- ☐ The issue/complaint is not grievable as indicated in standard operating procedure 316.02.01.001, *Grievance and Informal Resolution Procedures for Offenders*, and must be addressed as follows: _____

- ☐ You cannot grieve the length of your sentence or a decision that is under the jurisdiction of the court or Idaho Commission of Pardons and Parole.
- ☒ This problem is beyond the Idaho Department of Correction's (IDOC's) control.
- ☐ Other (must be approved by the review or appellate authority): _____

Appendix D
316.02.01.001

(Appendix last updated 2/14/12)

I talked to Quinn and he said to concern or have your case manager email Renae Wilmoth. He also said he would help you.

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Charles Coleman

IDOC Number: 97268

Institution, Housing Unit, & Cell: FCC I103B

Date: 11-4-2013

To: IDOC Records Department

(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: I'm asking for copies of my Discovery, Judgements & Commitments in Case Numbers CR-FE-305, CR-FE-9317, and CR-FE-23454 I'm in urgent need for these documents with emphasis on time is of essence!

(Description of the issue must be written only on the lines provided above.)

Offender signature: Charles Coleman

11-12 Staff Section

(Signature of Staff Member Acknowledging Receipt) / Associate ID #

Collected/Received:

(Date collected or received)

Reply: As per requested - the attached Judgement & Commitments. We do not know what you mean by copies of "Discovery". In the future, if you want the copies by a certain time... request them earlier. We do things in this office on a priority level & Offender Concern forms are not #1 on the list. If you want things by asking your Case Manager.

Responding Staff Signature: P. Lopez Associate ID : _____ Date: 11/6/13

Pink copy to offender (after receiving staff's signature).

Original and Yellow copy to responding staff (after completing the reply, yellow copy returned to offender)

☒ **Grievance****For Administrative Use**

Offender Section

Offender's signature: *[Signature]*

I am appealing the grievance for the following reason(s):

Offender's signature:

Exhibit B

RECEIVED
DEC 15 2010
CENTRAL RECORDS

NO. _____
A.M. 10:47 FILED P.M. _____
DEC 15 2010
J. DAVID MAVARI, Clerk
By *Chad Sharrin*

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

THE STATE OF IDAHO,

Plaintiff,

vs.

CHARLES SHELDTON COLEMAN,

Defendant.

DOB: [REDACTED]

SSN: [REDACTED]

Case No. CRFE-2009-23454

JUDGMENT OF CONVICTION

This being the time fixed by the Court for pronouncing sentence upon the defendant, CHARLES SHELDTON COLEMAN, the Court noted the presence of the Prosecuting Attorney, or his deputy, the defendant, and John E. Sutton, counsel for the defendant, in court.

The defendant was duly informed of the Information filed against him, and the defendant entered a guilty plea on June 9, 2010 to the crime of COUNT I: UNLAWFUL EXERCISE OF FUNCTIONS OF POLICE OFFICER, a felony under I.C. §18-711 committed on or between December 8, 2009 and December 15, 2009. Count II was/were dismissed pursuant to plea negotiations.

The defendant, and his counsel, were then asked if they had any legal cause or reason to offer why judgment and sentence should not be pronounced against the

1 defendant, and if the defendant, or his counsel, wished to make a statement on behalf
2 of the defendant, or to present any information to the Court in mitigation of punishment;
3 and the Court, having accepted such statement, and having found no legal cause or
4 reason why judgment and sentence should not be pronounced against the defendant
5 at this time; does render its judgment of conviction as follows, to-wit:

6 That, whereas, the defendant having pled guilty in this Court to the crime of
7 COUNT I: UNLAWFUL EXERCISE OF FUNCTIONS OF POLICE OFFICER, a felony
8 under I.C. §18-711 committed on or between December 8, 2009 and December 15,
9 2009.

10 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
11 defendant, CHARLES SHELDON COLEMAN, is guilty of the crime of COUNT I:
12 UNLAWFUL EXERCISE OF FUNCTIONS OF POLICE OFFICER, a felony under I.C.
13 §18-711 committed on or between December 8, 2009 and December 15, 2009 and
14 that he be sentenced to the Idaho State Board of Correction, under the Unified
15 Sentence Law of the State of Idaho, for an aggregate term of five (5) years, to be
16 served as follows: a minimum period of confinement of two (2) years, followed by a
17 subsequent indeterminate period of custody not to exceed three (3) years, with said
18 term to run concurrently with Ada County Case No. CRFE-2010-305 and said term to
19 commence immediately. The defendant shall receive three hundred fifty-eight (358)
20 days credit for time served prior to the entry of this Judgment.
21

22 IT IS FURTHER ORDERED that the defendant shall have no contact with Dana
23 Bish, Lindsay Fisher or Chase Bank.
24

CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 15th day of December, 2010, one copy of the: JUDGMENT OF CONVICTION AND COMMITMENT TO STATE as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

ADA COUNTY PROSECUTING ATTORNEY'S OFFICE
VIA EMAIL

John E. Sutton
Attorney at Law
200 N 3rd St, Ste 2 & 3
PO Box 799
Boise, ID 83701

ADA COUNTY JAIL
VIA EMAIL

PSI DEPARTMENT/P&P
VIA EMAIL

DEPARTMENT OF CORRECTION
VIA EMAIL

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By *Tina Morrison*
Deputy Clerk

Exhibit C

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,
Plaintiff-Respondent,

Vs.

CHARLES SHELDTON COLEMAN,
Defendant-Appellant.

Supreme Court Docket
38706-2011
Ada County Docket No.
2009-23454

STATE OF IDAHO,
Plaintiff-Respondent,

v.

CHARLES SHELDTON COLEMAN,
Defendant-Appellant.

Supreme Court Docket
38707-2011
Ada County Docket No.
2010-305

STATE OF IDAHO,
Plaintiff-Respondent,

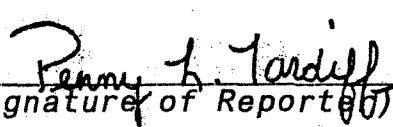
V.

CHARLES SHELDTON COLEMAN,
Defendant-Appellant.

Supreme Court Docket
2010-9317
Ada County Docket No.
2010-9317

NOTICE OF TRANSCRIPT FILED

Notice is hereby given that on June 6, 2011, I lodged a transcript 36 pages in length for the above-referenced appeal with the District Court Clerk of Ada County in the Fourth Judicial District.


(Signature of Reporter)

Penny L. Tardiff CSR

6-6-2011

Hearing Date: December 10, 2010

I-N-D-E-X

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R E P O R T E R ' S C E R T I F I C A T E

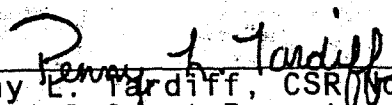
State of Idaho }
County of Ada } ss.

I, Penny L. Tardiff, Official Court Reporter,
County of Ada, State of Idaho, hereby certify:

That I am the reporter who took the proceedings
had in the above-entitled action in machine shorthand
and thereafter the same was reduced into typewriting
under my direct supervision; and

That the foregoing Reporter's Transcript contains
a full, true, and accurate record of the proceedings
had in the above and foregoing cause, which was heard
at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand
this 6th day of June, 2011.



Penny L. Tardiff, CSR No. 712
Official Court Reporter

BOISE, IDAHO
DECEMBER 10, 2010
SENTENCING HEARING

THE COURT: You may be seated. Good afternoon. We'll take up sentencing this afternoon, State versus Charles Sheldon Coleman. I think counsel is conferring with his client, so it may just be a moment. Three cases on the docket, a 2009 case, 23454, which charges unlawful exercise of a police officer, Count 1; Case CR-FE-10305, which is a robbery, and then a case that was consolidated to this court from Judge Wetherell, CR-FE-20109317. The defendant pled to one count of battery on a law-enforcement officer.

Mr. Haws is here for the state, and we'll go ahead as soon as the defendant and counsel appear, we'll take up any preliminary matters and then get right to victim statements, if any. How many victim statements did you have.

MR. HAWS: No oral statements today, Judge.

THE COURT: Did you have anyone testifying.

MR. HAWS: No. No testimony. Thank you.

MS. HERRETT: And, Your Honor, just for the

record, I represent Mr. Coleman on the consolidated cases, so I just wanted to place on the record that I'm here, but I believe Mr. Sutton will be making all the argument.

THE COURT: Thank you. And that for the record is Megan Herrett.

MS. HERRETT: Thank you.

THE COURT: Mr. Sutton, good afternoon.

MR. SUTTON: Good afternoon, Your Honor.

THE COURT: And, Mr. Pullman, good afternoon to you, sir.

THE DEFENDANT: Hi, sir.

THE COURT: So we've got three cases before us. And, Mr. Sutton, are you then appearing on the CR-FE-2010-9317 case, which is the battery on a law-enforcement officer?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right, I'll discharge the Public Defender's office at this time.

MS. HERRETT: Thank you, Your Honor.

THE COURT: Well, now, the court has had an opportunity in this case to review the presentence. There's an addendum to the presentence report. The court has already made a correction to the presentence report, particularly the last paragraph on page 11 under

the "Investigator's Comments: an analysis of the defendant's condition." She referenced the "kidnapping," and I struck that and put in "robbery." The only issues before the court is the robbery, so that's the court's own correction on the presentence report, but did the state have any corrections or changes to the presentence report or the addendum?

MR. HAWS: No, Your Honor, I did not. Thank you.

THE COURT: Did the defense?

MR. SUTTON: We do not, Your Honor. Thank you.

THE COURT: I inquired of the state earlier and the victim's statements that are contained in the presentence report and the victim's wish to submit it on that, and so I do want to thank our victims for participating in this process. Your input is very, very valuable, and very important to the court.

The state indicated they didn't have any additional testimony. Did the defense have any additional testimony or documentation for the court to consider?

MR. SUTTON: Your Honor, argument only, Your Honor.

THE COURT: Now restitution, I had down as

\$933.

MR. HAWS: In the one case, that's correct, Judge.

THE COURT: I don't think that there's any -- well, there is no other claim in the other cases.

THE COURT: All right, so no medical costs to the officer or anything.

MR. HAWS: Judge, I'll double-check that.

THE COURT: I didn't see any.

MR. HAWS: I don't believe so. If I could send to the bench -- through the courtesy of the bailiff -- a proposed order for restitution in the case number ending in 305.

THE COURT: Yes, that's the robbery. What's the defense position? I'll certainly let you make a presentation to the court whether or not the defendant can afford to pay it, but is the amount accurate?

MR. SUTTON: We have no objection, Your Honor. We believe that Mr. Coleman will make every effort to liquidate this amount as soon as possible.

THE COURT: All right. If there's no other preliminary matters then, the court will hear recommendations from the state.

Mr. Haws.

MR. HAWS: Thank you.

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1 it wasn't a spur of the moment, rash decision, that was
2 just a crime of opportunity.

3 Your Honor, what further shows it is that
4 the defendant, while he may not have made away with a
5 great deal of amount of cash the first time, went back
6 and attempted to perfect this crime the second time, and
7 that's where Ms. Bish comes in.

8 And again, the planning that was involved
9 here, Judge. This is elaborate and intricate. The
10 defendant must have followed Ms. Bish home from work at
11 some point and figured out where she lived and picked
12 the person that he thought he could physically dominate,
13 and then -- again, I'm not trying to focus on the crime
14 in Nampa as to have the sentence based on that, but to
15 give you an understanding from our view, why we think
16 that this is a calculated event rather than a crime of
17 opportunity.

18 And then after having had that occasion or
19 that encounter with Ms. Bish, then the next day to call
20 the bank and try to feel her out for information about
21 the security measures that the bank uses, asking her to
22 take home the bills that are used, and so he can figure
23 out how to better perfect this crime of bank robbery a
24 second time.

25 Again, Judge, following that, we have the

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1 to emphasize that the defendant's past criminal history
2 has to do with this fraud that he carries out on using a
3 person's lack of knowledge about his true identity. He
4 uses a fake identification card to get a job, and that's
5 the nature of the first offense, and then the identity
6 theft is the charge in Arizona, and we have these
7 offenses here in Idaho.

8 And the defendant's inability to take
9 accountability for his true actions here, blaming
10 methamphetamine and just acting as though he was making
11 a decision that was rash.

12 Judge, I think that if you look through the
13 mental health evaluations and the other assessments that
14 were made, specifically with the 19-2524 mental health
15 -- the defendant -- or the evaluator finds that the
16 defendant is narcissistic, and I think that's a good
17 evaluation. It's one of the character traits or
18 descriptions for the defendant is this narcissism that
19 is clear in these crimes as well.

20 Your Honor, couple all that with the fact
21 that, while facing the sentencing on these two crimes,
22 carries out the battery on the jailer is another
23 aggravating factor.

24 For those reasons, Your Honor, the state, we
25 were, frankly, varying in between what we're going to

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1 letter that was intercepted talking about this was going
2 to be a bigger deal. I had information that it was
3 going to be millions of dollars that drop the day
4 before, or something like that, so, Your Honor, from our
5 view, this is exactly what the defendant was involved in
6 and wanting to be involved in. And this was not a
7 matter of "I'm taking advantage of some downtime here
8 and not knowing. I was out of my mind."

9 In fact, Judge, just like the defendant's
10 girlfriend, this information about methamphetamine comes
11 out of left field for the state. When we talk about,
12 what is the theory here; what's going on here; what is
13 the defendant's motive; what is this about?
14 Methamphetamine is nowhere in the picture. When the
15 defendant talks to the two officers, at no time does he
16 talk about it. At no time is methamphetamine in the
17 picture. And I think from the state's view, Judge, this
18 late decision on the part of the defendant to say this
19 was methamphetamine-related is to show again, this is a
20 young and dumb decision, you know, a rash decision I
21 didn't make when I was thinking clearly. On the
22 contrary, he was thinking clearly, and this was all very
23 sly and very astute and very calculated in his
24 commission of this crime.

25 To add to this, Your Honor, I guess I want

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1 recommend today and recommending an indeterminate life
2 sentence. I ultimately decided against that and
3 recommend the following sentence to, Your Honor.

4 We recommend that you impose a judgment of
5 conviction on each of these three cases. We recommend a
6 10 year fixed, 20 year indeterminate sentence on -- you
7 know, for a total of 30 years on the robbery. We
8 recommend a 2 year fixed, 3 year indeterminate for a
9 total of 5 year sentence; that that run concurrent on
10 the unlawful execution of police function case.

11 Then, Judge, we recommend 1 year fixed, 4
12 indeterminate sentence for a total of 5; that that run
13 consecutive on the battery on the jailer case, so the
14 net then would be an 11 fixed 24 year indeterminate
15 sentence for a total of 35 years. We recommend that
16 that be imposed, clearly. We recommend that Your Honor
17 order the restitution as we've talked about today. I'll
18 leave the issue of fine in your discretion, and that he
19 comply with the psychological evaluation and the
20 recommendations made therein.

21 Judge, we recommend a no contact order on
22 behalf of Ms. Bish and Ms. Fisher. If I could, Judge,
23 send those up to the bench at this time.

24 THE COURT: All right, thank you.

25 MR. HAWS: Your Honor, one of the last

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1 indeterminate period of 15 years on Count 1. On Count 2
2 that he receive 1 year fixed followed by an
3 indeterminate period of 5 years. On Count 3, he
4 received a 1 year fixed followed by an indeterminate
5 period of 4 years.

6 We've attempted to effect some judicial
7 economy by bringing the case that involved the battery
8 on a police officer to this court so this court, in its
9 wisdom and judgment, can address these issues and reach
10 a global resolution.

11 I've talked to the person he was on the
12 phone with the night that this event took place in the
13 jail, and, from my perspective, I don't know that Mr.
14 Coleman fully understood the culture of the conduct
15 that's expected in our jails.

16 When you are told something, it's not
17 expected that this is going to be a discussion. This is
18 going to be something that you do, that you immediately
19 respond to, and it's not open to negotiations. And I
20 think in that event, I think he was thinking that he
21 could continue talking, and then when they finally lost
22 their sense of patience, I think only then did he
23 realize that that's not the code of conduct in our jails
24 and you have to come to terms with that, and if you have
25 to learn the hard way, we're sorry, but that's how our

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1 heart-felt condolences and apology to the people he
2 threatened, that he frightened, in going through this
3 event.

4 I think he is capable of being
5 rehabilitated. I don't believe he has to be warehoused
6 for 10 years. I think he gets it. When I first met him
7 to today, I think his personality has shown, I think, a
8 remarkable accountability for what's been going on. I
9 think sometimes when you're young, you think that you're
10 bulletproof, you think that you're smarter than everyone
11 else. The truth is you're not. You're none of those
12 things. We expect you to have a standard of conduct
13 that is no different for you than it is for us. None of
14 us think, in terms of doing this. Even though he's
15 facing economic hardship and he's grasping at straws,
16 there are other avenues he could go for help, not get
17 involved in such a horrific crime, as this one is that
18 has such a shattering impact on our community.

19 I believe my proposals to the court serves
20 two purposes. One it makes him come face to face with
21 the consequences of doing something like this in Boise,
22 Idaho. Secondly, it gives him hope. It gives him the
23 opportunity; that he will be a model citizen while he's
24 in custody, and that he will have the extended period of
25 citizenship review or probation by the Department of

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1 jails operate.

2 I believe, and I think that there are
3 studies who would demonstrate, that the most crucial
4 impact to be incarcerated has, is usually the first
5 number of years for someone who's incarcerated. I don't
6 believe this young man has to be incarcerated for 10
7 years. I'd submit that he's already been incarcerated
8 nearly a year. On the 18th of this month, it would have
9 been one year he's been in custody. I believe the court
10 can impose a sentence where he has a long tail on the
11 probation, so he is on supervised probation; he's on
12 close supervision; and I think that gives him something
13 to look forward to. He has his fiance who's present and
14 has been present in all the different court scheduled
15 events. He has a very, you know, he's very fortunate to
16 have this young son that he has, who's going to need to
17 have a done that shows him, explains to him that you
18 don't do this type of thing. It's never going to be
19 acceptable, and that he is eternally remorseful for this
20 event taking place, and for the emotional trauma he put
21 the people who were working at the bank through at the
22 time of this event.

23 I'd submit, Your Honor, that this young man
24 will make restitution. I submit this young man, if
25 given the opportunity, will continue to extend his most

20

1 Probation and Parole, so they will closely monitor him
2 and reinforce the notions that all of us have of how
3 someone is to behave, how someone can comport themselves
4 while he's on this extended period of probation.

5 THE COURT: Mr. Sutton --

6 MR. SUTTON: Any questions?

7 THE COURT: No questions -- thank you.

8 Mr. Coleman, before the court sentences you,
9 you have the right to speak with the court, sir. Is
10 there anything that you'd like to say?

11 THE DEFENDANT: Yes, sir.

12 Your Honor, I understand the prosecution has
13 given you an image of me as being a monster and a
14 horrible person, but I'm no -- I'm no gang member, and
15 I'm definitely not a violent person, sir. I made a big
16 mistake, and I understand what I've done, and I've been
17 a fool. And I've been inconsiderate. I've been
18 inconsiderate in what I've done. And just taking
19 accountability for what had happened is fairly -- just
20 to have to stand here before you today, I'm completely
21 embarrassed, humiliated and ashamed to even be labeled a
22 menace to society.

23 And being under the influence, sir, it
24 just -- it just took me completely out of my character,
25 and it's just not the person I want to be and it's not

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1 father on then phone or not. I mean, that really just
2 goes right to the very core. So, clearly, what I'm
3 trying to point out here is we have victims. And again,
4 that's an offense that calls for, not only punishment,
5 but there is a community protection aspect to that as
6 well, protection of society.

7 The third offense that brings you before the
8 court is just, there's just no real sensible explanation
9 for it. We want our jails to be places where, as best
10 we can, people are safe. There's violence there.
11 Certainly we don't want violence between inmates or
12 consequences for that. We don't want violence against
13 those people that are there to protect those inmates --
14 those guards.

15 And so that's one of the reasons why
16 certainly a court, where you're serving a sentence can
17 make it consecutive, and you can understand why, because
18 if we send out the message that you can just have
19 yourself a great time in the jail and get into fights
20 and batter and injure correctional guards, and there's
21 no real consequence for that, you're going to be going
22 to the penitentiary anyway, that's why the legislature
23 certainly made a consecutive sentence, mandated
24 sentence, when you are serving a sentence.

25 So I'm looking at a man who has some talents

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1 And so I'm not going to sit here today and
2 say that you don't have an addiction to methamphetamine,
3 but what I am saying is I can't find from what I
4 reviewed that this was the act of a delusional drug
5 addict that you put a great deal of emphasis upon, and
6 say, well, this is an event not likely to occur again
7 with this defendant, so that's the court's take on that
8 aspect of it.

9 For our victims, again, I want to thank you
10 for being here, and I'm going to sign a no contact order
11 for the entire length of time that this defendant is on
12 parole/probation. And it will be parole. I'm not going
13 to grant probation here today. And I want to assure you
14 that there won't be any contact, and if there is any
15 contact, that's a clear violation of the law.

16 I also want to speak to the fact that Mr.
17 Coleman is going to be released back into society at
18 some point in time. And what I have to evaluate is what
19 is a balance of protection to society, deterrence to
20 him, and, yes, there should be deterrence to the general
21 community because there's this concept out there that
22 you can rob banks and you can get away with it. And
23 what's a balance of that versus if I put him in the
24 penitentiary for such a lengthy period of time, and as
25 young as he is, he comes out with all of the bad values

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1 and skills. You've got a college education. You know
2 about computers. I think that's what I read. You have
3 good intellect, according to the mental-health
4 evaluation. How do I treat this substance-abuse issue?
5 In other words, "I was strung out on methamphetamine and
6 didn't know what I was doing."

7 You know, a judge has to hopefully have the
8 insight and common sense that my experience with folks
9 that are coming down off of methamphetamine,
10 particularly where they've been tweaking, they may be
11 extremely paranoid, and, they may, in fact, be
12 delusional, but -- and I'm certainly not saying that
13 banks haven't been robbed by people who are coming down
14 off of methamphetamine use over an extended period of
15 time, but it's pretty rare. I mean, they are
16 delusional, but they may look at someone and think that
17 that person is going to attack them, it's that kind of a
18 delusion. It's not the kind of delusion where a note's
19 prepared; you go into a bank. Clearly, this was a
20 planned bank robbery. And, in fact, my reading of the
21 police reports is it's not like you parked in front of
22 the bank and in his delusional state walked in and
23 pulled this thing off. You parked your car in a
24 location that tells me that there was some thinking
25 going on. There was some rational thought going on.

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1 of a prison setting, that he's released back into
2 society far worse than when he went in, because that
3 certainly can happen with an extended period of
4 incarceration.

5 And, frankly, I'm convinced that if someone
6 is truly repentant and truly willing to reexamine what
7 they did, the Probation/Parole Commission, they evaluate
8 that. They take a careful look at that, and if that's
9 not the case, they don't grant early parole dates.

10 So those are the things that the court, Mr.
11 Coleman the court is looking at, and I hope you carry
12 away from this today an understanding as to what you've
13 done and why the court's going to sentence you the way
14 the court is.

15 That being said, convictions will enter as
16 to the first count, it will be the unlawful exercise of
17 a police officer. I confer with the state that will
18 carry with it a 2 year fixed, 3 year indeterminate
19 sentence with credit for time served. And we'll
20 calculate that credit for time served. I think we're up
21 to, if your counsel's correct, I think we're up to 358
22 days as of today's date.

23 On the robbery, the court will sentence you
24 to 6 1/2 years fixed and 24 1/2 years indeterminate, and
25 the reason for that lengthy probationary period is there


In Accordance

Exhibit D

Coleman, Charles 97268

For Inmate's Records

K. Khataib, MD
CCA-Idaho Correctional Center

 5/26/12

Diagnoses:

Mood D/O

Anxiety D/O (GAD/Panic/PTSD/OCD symptoms)

ADHD

Medication: Risperidone/Mirtazapine

45 mg/d

Exhibit F

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Charles Colquhoun

IDOC Number: 97268

Institution, Housing Unit, & Cell: W103B

Date: 5/7/14

To: Wm Tibbworth
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: May I have a copy of my PSI
Report? Thank You

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

(Signature of Staff Member Acknowledging Receipt) / Associate ID #

Collected/Received: 5-8-14
(Date collected or received)

Reply: I can not provide you with this form

Responding Staff Signature: [Signature] Associate ID : _____ Date: 5/7/14

Pink copy to offender (after receiving staff's signature).

Original and Yellow copy to responding staff (after completing the reply, yellow copy returned to offender)