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## Baker v. State Respondent's Brief Dckt. 41614

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## STATEMENT OF THE CASE

### Nature of the Case

Donald Victor Baker appeals from the district court's order summarily dismissing his post-conviction petition.

### Statement of Facts and Course of Proceedings

The state charged Baker with trafficking in methamphetamine (Ada County Case No. CR-2010-19696); and methamphetamine possession with intent to deliver (Ada County Case No. CR-2010-14470). (R., pp.162-163.<sup>1</sup>) The state also charged Baker with the persistent violator sentencing enhancement in both cases. (R., pp.162-163). Pursuant to plea agreement, Baker pled guilty to trafficking in methamphetamine, and the state agreed to dismiss the methamphetamine possession with intent to deliver charge and both sentencing enhancements. (Id.) Further pursuant to the agreement, the state was permitted to argue the facts of the dismissed charge at sentencing, and to seek restitution for lab and investigative costs associated with the dismissed charge. (Id.) The state also agreed to recommend no more than the three-year mandatory minimum fixed sentence for methamphetamine trafficking. (Id.) The district court imposed a unified 15-year sentence with three years fixed. (R., p.181.) Baker filed no direct appeal of his conviction or sentence. (See R., p.137.)

In April 2012, Baker filed a *pro se* petition for post-conviction relief. (R., pp.5-18.) He later filed an amended petition. (R., pp.136-160.) The district court

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<sup>1</sup> See also Idaho Data Repository, Ada County Case Nos. CR-2010-14470; CR-2010-19696.

denied Baker's motion for appointment of counsel and his various requests to conduct discovery. (R., pp.32, 121-122, 128)

The court construed Baker's petition as containing the following claims and sub-claims: 1. His trial counsel was ineffective for (a) failing to investigate whether police officers could have identified him in the environmental conditions present at the time of his arrest; (b) failing to obtain information that the C.I. who conducted the controlled drug buy had a pending criminal charge and an agreement with the state regarding his participation in Baker's case; (c) failing to challenge certain testimony from the grand jury proceedings; (d) failing to file a motion to suppress; (e) failing to challenge the restitution award; (f) failing to utilize an entrapment defense; and (g) coercing him to plead guilty; (2) the state committed Brady<sup>2</sup> violations by: (a) failing to disclose that the C.I. had a pending criminal charge against him and an agreement with the state to participate in Baker's case; (b) failing to disclose the original audio recording of the controlled buy and instead disclosing only a redacted version; and (c) failing to disclose that it had switched the high-end methamphetamine associated with Baker's case with cheaper low-grade methamphetamine shards, and then presenting the latter to the district court at the sentencing hearing;<sup>3</sup> (3) the officers entrapped him; and (4) the district court lacked subject matter jurisdiction to order Baker to pay restitution in the dismissed case. (R., pp.273-283, 318-320.)

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<sup>2</sup> Brady v. Maryland, 373 U.S. 83 (1963)

<sup>3</sup> The district court did not reference this claim regarding the methamphetamine shards in its second notice of intent to dismiss, but did so in its dismissal order after Baker raised it in his response to the court's notice. (R., pp.293-296, 318-319.)



After entering two separate notices of intent to dismiss (R., pp.203-213, 273-283), the district court summarily dismissed Baker's petition (R., pp.318-320). The court concluded that Baker failed to allege facts which, if true, would entitle him to relief as to any of his claims. (R., pp.273-283, 318-320, 323.) Baker appealed.<sup>4</sup> (R., pp.301-304.)

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<sup>4</sup> Baker appears to have filed a notice of appeal from a non-appealable order - the district court's second notice of intent to dismiss the post-conviction petition. (R., pp.301-304); I.A.R. 11. The Idaho Supreme Court conditionally dismissed the appeal (12/6/13 Order; 1/22/14 Order), but withdrew this dismissal and reinstated the appeal after the district court subsequently entered an appealable final order summarily dismissing Baker's post-conviction petition. (4/17/14 Order; R., pp.323.) Baker's premature notice of appeal was therefore perfected upon the subsequent entry of the district court's final judgment. See Weller v. State, 145 Idaho 652, 654, 200 P.3d 1201, 1203 (Ct. App. 2008). (Recognizing that while a strict interpretation of the appellate rules would render premature notices ineffective in such circumstances, the Idaho Supreme Court has frequently held otherwise and has exercised its discretion to consider the merits of such appeals. Id. (citations omitted.)

## ISSUES

Baker's brief does not contain a statement of issues on appeal as required by I.A.R. 35(a)(4).

The state phrases the issues on appeal as:

1. Has Baker failed to show that the district court erred in summarily dismissing his post-conviction petition?
2. Has Baker failed to show that the district court erred in denying his requests to conduct discovery?

## ARGUMENT

I.

### Baker Has Failed To Show That The District Court Erred In Summarily Dismissing His Post-Conviction Petition

#### A. Introduction

Baker contends that the district court erred in summarily dismissing his post-conviction petition. (See generally Appellant's brief.) However, a review of the record reveals that Baker failed to allege facts which, if true, demonstrated he was entitled to relief as to any of his claims. Therefore, he cannot show that the district court erred.

#### B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007).

#### C. General Legal Standards Governing Post-Conviction Proceedings And Identification Of The Issues Raised In Baker's Appellant's Brief

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman, 144 Idaho at 522,

164 P.3d at 802; State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983).

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party's motion or on the court's own initiative, if the applicant "has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). Until controverted by the state, allegations in a verified post-conviction application are, for purposes of determining whether to hold an evidentiary hearing, deemed true. Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). However, the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

Also, because the trial court rather than a jury will be the trier of fact in the event of an evidentiary hearing, summary disposition is permissible, despite the possibility of conflicting inferences to be drawn from the facts, for the court alone will be responsible for resolving the conflict between those inferences. State v. Yakovac, 145 Idaho 437, 444, 180 P.3d 476, 483 (2008). That is, the judge in a post-conviction action is not constrained to draw inferences in favor of the party opposing the motion for summary disposition but rather is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. Id.

In this case, Baker's petition, amended petition, and appellant's brief are lengthy, repetitive, and difficult to decipher. Baker's Appellant's brief does not contain a statement of issues on appeal as required by I.A.R. 35(a)(4).

The affidavits and exhibits Baker submitted to the district court are sparse, vague, conclusory, and generally do not support the arguments he raises in his petition. (See R., pp.17-18, 136-160, 229-230, 235-245, 292-300.) Below and on appeal, Baker asserts that he hired a private law firm to investigate his post-conviction claims, and that this firm compiled a "final report" supporting his claims. (Appellant's brief, pp.4-5, 21-22; R., p.219.) However, the record does not contain any such report. The only evidence relating to this private investigation contained in the record is a letter from the law firm apologizing to Baker that it *could not* be of significant assistance to him (R., pp.229-230), and documents that Baker purports to be related to a separate criminal case involving the C.I. who was involved in the controlled drug buy that led to Baker's arrest (R., pp.183-195).

Further, on appeal, Baker does not assign any specific error to the district court,<sup>5</sup> but instead provides lengthy recitations of relevant law without applying it to his case, and largely repeats arguments submitted in support of his petition

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<sup>5</sup> This Court may affirm the district court's summary dismissal of Baker's petition on the ground that he failed to assign specific error to the district court. It is well settled that the appellate court will not review actions of the district court for which no error has been assigned and will not otherwise search the record for errors. State v. Hoisington, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983); see also State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (a party waives an issue on appeal if either authority or argument is lacking).

submitted below. (See generally Appellant's brief.) It is thus difficult both to identify the claims raised, and to thoroughly respond to each of them.

The district court construed Baker's petition as containing four claims and numerous sub-claims as described above in the "Statement of Facts and Course of Proceedings." (R., pp.273-283, 318-320.) On appeal, Baker does not argue that the district court failed to address any of his claims in dismissing his petition, or that the state or the court mischaracterized any of his claims. (See generally Appellant's brief.) Thus, all of the claims potentially at issue before this Court are among those identified by the district court in its second notice of intent to dismiss and its dismissal order.<sup>6</sup> Baker has not raised all of these claims in his Appellant's brief. Instead, the state liberally construes<sup>7</sup> Baker's Appellant's brief as challenging the district court's summary dismissal of the following claims: (1) His trial counsel was ineffective for (a) failing to investigate whether officers could have identified him in the environmental conditions present at the time of his arrest; (b) failing to obtain information that the C.I. who conducted the controlled drug buy had a pending criminal charge and an agreement with the state regarding his participation in Baker's case; (c) failing to challenge the restitution

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<sup>6</sup> Therefore, any claims that Baker attempts to raise on appeal that were not among those identified by the district court in either its second notice of intent to dismiss the petition, or in its dismissal order, are unpreserved, and may not be considered on appeal. Sanchez v. Arave, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991) (explaining that, generally, issues not raised below may not be considered for the first time on appeal).

<sup>7</sup> To the extent that this Court construes Baker's petition as containing any additional claims, the state relies on the analysis set forth the by the district court in summarily dismissing Baker's post-conviction petition. (See R., pp.203-213, 273-283, 318-319.)

award; and (d) coercing him into pleading guilty; and (2) the state committed Brady violations by: (a) failing to disclose the original audio recording of the controlled buy and instead disclosing only a redacted version; and (b) failing to disclose that the C.I. had a pending criminal charge and an agreement with the state to participate in Baker's case. (See generally Appellant's brief.) Baker has failed to show error in the district court's summary dismissal of any of these claims.

D. Baker Failed To Show He Was Entitled To Relief As To Any Of His Ineffective Assistance Of Counsel Claims

A post-conviction petitioner alleging ineffective assistance of counsel must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). Bare assertions and speculation, unsupported by specific facts, do not make out a *prima facie* case for ineffective assistance of counsel. Roman, 125 Idaho at 649, 873 P.2d at 903.

An attorney's performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel's conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable ...." Strickland, 466 U.S. at 690. To establish prejudice, a defendant must show a reasonable probability that, but

for counsel's deficient performance, the outcome of the proceeding would have been different. Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988); Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

1. The District Court Properly Dismissed Baker's Claim That His Trial Counsel Was Ineffective For Failing To Perform An Adequate Investigation

Baker contends that his trial counsel was ineffective for failing to adequately investigate his case prior to the entry of his guilty plea. (Appellant's brief, pp.14-16, R., pp.276-277.) Specifically, the district court construed Baker's petition as asserting that officers could not have identified him in the environmental conditions that were present at the time of his arrest, and that his attorney should have more adequately investigated this potential defense. (R., pp.276-277.) Baker's claim fails because it is conclusory and not adequately supported by admissible evidence.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 691. However, "the duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up; reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste." Rompilla v. Beard, 545 U.S. 374, 383 (2005). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he or she did so for



tactical reasons rather than through sheer neglect.” Suits v. State, 143 Idaho 160, 164, 139 P.3d 762, 766 (Ct. App. 2006) (citing Yarborough v. Gentry, 540 U.S. 1, 8 (2003)).

In this case, as the district court properly concluded (R., pp.276-277), Baker failed to adequately support this claim with admissible evidence. In his amended post-conviction petition, Baker asserts that he enlisted a friend to take photographs at the site of his arrest from various distances, and that the friend reported to him that he was unable to identify a person in a vehicle from relatively short distances. (R., pp.147-148.) This hearsay, presented without appropriate context regarding what the police observed, is insufficient to raise a genuine issue of material fact with regard to this claim.

Further, the state asserts that because Baker chose to plead guilty and accept a favorable plea agreement in which a felony charge and two sentencing enhancements were dismissed (R., pp.162-163), his attorney was not required to engage in as thorough an investigation to uncover potential factual defenses to the charge that he may have been had the case proceeded to jury trial. At the change of plea hearing, Baker testified that he understood he was waiving his right to require the state to prove the charges against him, that he was satisfied with his counsel's representation, and that there was not anything that he wanted his counsel to do that his counsel had not yet done. (R., pp.166-167.) This contradicts Baker's allegation that he asked his counsel to more closely investigate the credibility of the officers' identification of him. Baker's after-the-

fact disagreements with his counsel's pre-trial investigative strategies do not demonstrate that his counsel was ineffective.

Baker also failed to demonstrate prejudice from any deficiency. Baker has failed to allege facts demonstrating that the officers' initial visual identification of him during the controlled drug buy was so critical to the state's case that Baker would not have pled guilty had he been successful in casting doubt on that identification. (R., pp.177-178.) Though there was no jury trial to further develop the facts, it appears the state's case was based upon a phone call between the Baker and the C.I., and the subsequent controlled buy in the parking lot, both of which were recorded. (See R., pp.168-169.)

Because Baker failed to allege facts which, if true, would entitle him to relief on his claim that his trial counsel was ineffective for failing to adequately investigate the case, this Court should affirm the trial court's summary dismissal of this claim.

2. The District Court Properly Dismissed Baker's Claim That His Trial Counsel Was Ineffective For Failing To Adequately Investigate The C.I.

Baker contends that his trial counsel was ineffective for failing to obtain information that the C.I. who conducted the controlled buy with Baker had a pending criminal charge and an agreement with the state to participate in Baker's case. (Appellant's brief, pp.16, 23; R., p.277.) Baker's claim fails because it is conclusory and not adequately supported by admissible evidence.

Baker has failed to provide context or specifics regarding his allegations. For example, Baker has failed to allege or present evidence that his trial counsel

was unaware of the C.I.'s pending criminal charge, that trial counsel's advice to Baker regarding whether to plead guilty would have been different had he known of the potential impeachment evidence,<sup>8</sup> or that Baker would have declined to accept the state's plea agreement if he had access to this information.

Because he failed to assert facts which, if true, would entitle him to relief on his claim that his trial counsel was ineffective for failing to adequately investigate the C.I., this Court should affirm the trial court's summary dismissal of this claim.

3. The District Court Properly Dismissed Baker's Claim That His Trial Counsel Was Ineffective For Failing To Challenge The Restitution Award

Baker contends that his trial counsel was ineffective for failing to challenge the restitution award. (Appellant's brief, pp.16-17.) Baker appears to assert that it was unlawful for the district court to order him to pay restitution associated with his dismissed charge. (See R., p.7, 224.) Baker's claim fails both because he failed to adequately support it with admissible evidence, and because it is belied by the record.

As the district court recognized (R., p.278), the terms of the plea agreement permitted the state to seek restitution on the dismissed

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<sup>8</sup> With respect to both Baker's ineffective assistance of counsel and Brady claims relating to the C.I., the state liberally infers that Baker asserts that evidence of the pending criminal charge against C.I. could have been used as impeachment evidence at trial. However, in his amended post-conviction petition and Appellant's brief, Baker's issue with the C.I.'s pending criminal charge appears to instead be that it violated the C.I.'s agreement with the Idaho State Police. (See Appellant's brief, pp.21-24; R., p.150.) Whether or not the C.I. breached any agreement with the Idaho State Police has no bearing on Baker's conviction or post-conviction claims.

methamphetamine charge as a term of the plea agreement entered into by Baker. (R., p.163.) Idaho law permits courts to, with the consent of the parties, order restitution even where the crime is not adjudicated or not before the court. I.C. § 19-5304(9). Further, Baker submitted no evidence supporting any allegation that the restitution amount awarded by the court was unreasonable, or that the awarded restitution amount would have been different had Blake's counsel challenged it.

Because he failed to assert facts which, if true, would entitle him to relief on his claim that his trial counsel was ineffective for failing to challenge the restitution award, this Court should affirm the trial court's summary dismissal of this claim.

4. The District Court Properly Dismissed Baker's Claim That His Trial Counsel Was Ineffective For Coercing Him To Plead Guilty

Baker contends that his trial counsel was ineffective for coercing him to plead guilty. (Appellant's brief, pp.7, 15, 18.) This claim fails because it is conclusory and not adequately supported by admissible evidence.

Baker has failed to provide context or specifics regarding this claim. Baker submitted no evidence that any advice from his trial counsel to plead guilty was based upon ignorance of the law or any other objective deficiency. Further, as noted above, Baker entered into a favorable plea agreement in which a felony methamphetamine charge and two sentencing enhancements were dismissed. Baker has not demonstrated that the state's case against him was weak or that there were any other factors that rendered his counsel's advice with regard to the

plea agreement deficient. This Court should therefore affirm the trial court's summary dismissal of this claim.

E. Baker Has Failed To Show He Was Entitled To Relief As To Either Of His Brady Claims

Due process requires the prosecution to disclose to the defense all exculpatory evidence known to the state or in its possession. Brady v. Maryland, 373 U.S. 83 (1963). When there has been a conviction *after trial*, a Brady violation is found if the defendant can show: (1) that the evidence was exculpatory or impeaching; (2) that the evidence was suppressed by the state; and (3) materiality (i.e. prejudice). State v. Shackelford, 150 Idaho 355, 380, 247 P.3d 582, 607 (2010) (citing Strickler v. Greene, 527 U.S. 263, 281-82 (1999)).

On a Brady challenge to a guilty plea, the test of prejudice is whether there is a reasonable probability that, but for the state's failure to produce the information, the defendant would not have entered the plea but would have insisted upon going to trial. Roeder v. State, 144 Idaho 415, 418, 162 P.3d 794, 797 (Ct. App. 2007) (citing State v. Gardner, 126 Idaho 428, 436, 885 P.2d 1144, 1152 (Ct. App. 1994)). In making this determination, the court will "employ an objective assessment, based in part on the persuasiveness of the withheld information as to whether the particular defendant and his counsel would have insisted on going to trial." Roeder, 144 Idaho at 418-419, 162 P.3d at 797-798. The court will not consider a defendant's subjective statements that he would not have pled guilty had he known of the information. Id. at 419, 162 P.3d at 798. The court must also consider any objective motivations a defendant may have

had for pleading guilty. Gardner, 126 Idaho at 436-437, 885 P.2d at 1152-1153. "Any benefit derived by the defendant from the guilty plea is a significant factor inasmuch as a plea may be heavily motivated by reduction of exposure to additional charges and criminal penalties." Id. at 437, 885 P.2d at 1153

1. The District Court Properly Dismissed Baker's Claim That The State Failed To Disclose An Unredacted Version Of The Audio Recording Of The Controlled Buy

Baker contends that the state committed a Brady violation by failing to disclose an unredacted version of the audio recording of the controlled buy, and by instead disclosing only a redacted version which "ended prematurely." (Appellant's brief, pp.22-23, 27; R., p.146.) Baker's claim fails because he has failed to support it with adequate admissible evidence.

Baker's assertions that the state disclosed only a redacted version of the audio recording, and that the redacted material was exculpatory, is based upon an affidavit of Jason Whitaker. (R., pp.159-160.) In the affidavit, Whitaker asserted that he approached a vehicle in a Boise Shopko parking lot, presumably on the date and location of the controlled buy leading to Baker's arrest. (Id.) Whitaker asserted that he saw his roommate (whom Baker asserts was the C.I.), in the vehicle and wanted to "make sure everything was okay." (Id.) Whitaker then asserted that "[e]verything must [have] been okay because I don't remember anything." (Id.) These alleged facts are not sufficient to raise an issue of genuine issue of material fact with regard to this claim.

First, Baker has not submitted evidence demonstrating that the state redacted the audio, or that any such redaction was unknown to Baker and/or his

trial counsel prior to his guilty plea. In any event, even assuming that the state redacted some kind of communication between Whitaker and Baker or the C.I. (or simply limited its disclosure to the relevant portion of the audio recording involving discussion of the drug buy), Baker has failed to allege or demonstrate that any such statement was exculpatory and material to his guilt or innocence. As noted above, Whitaker's affidavit contained no information regarding what he said or did not say when he encountered the C.I. Baker's allegations regarding this claim are entirely speculative. Therefore, Baker has failed to allege facts demonstrating that any information redacted from the audio was exculpatory, that the information was actually suppressed by the state, or that the information resulted in Baker pleading guilty rather than pursuing a jury trial.

Finally, as the district court implicitly recognized (R., pp.279-281), Baker waived this claim by failing to raise it on direct appeal. Generally, a post-conviction petition is not a substitute for a direct appeal, and any issue which could have been raised on direct appeal, but was not, is forfeited. I.C. § 19-4901(b). Any alleged redaction in the audio recording disclosed by the state would or should have been apparent to Baker prior to entering his guilty plea, particularly since Baker was present when the controlled buy took place. He therefore could have raised this issue on direct appeal.

Baker has failed to allege facts, which if true, indicate that he was entitled to relief on his Brady claim regarding the audio recording of the controlled buy. Baker has therefore failed to show that the district court erred in summarily dismissing this claim.

2. The District Court Properly Dismissed Baker's Claim That The State Failed To Disclose Criminal Record Of C.I.

Baker contends that the state committed a Brady violation by failing to disclose that the C.I. who was involved in the controlled buy leading to Baker's arrest had a pending criminal charge and an agreement with the state to participate in Baker's case. (Appellant's brief, pp.19-24; R., pp.277.) Baker's argument fails because he has failed to allege facts which, if true, indicate he is entitled to relief on this claim.

First, it is not clear from the record that Baker has alleged or presented evidence to support any proposition that the state failed to disclose the existence of any pending criminal charge against the C.I., or any agreement regarding that charge and the C.I.'s role in the controlled buy. Nor has Baker alleged or presented evidence demonstrating that he or his trial counsel were unaware of the C.I.'s pending criminal charge or agreement with the state at the time Baker entered his guilty plea.

In any event, the state had no duty to disclose such information prior to Baker's guilty plea because it was merely potential impeachment evidence. "The United States Constitution does not require the State to disclose material impeachment information prior to entering a *plea agreement* with the defendant." Dunlap v. State, 141 Idaho 50, 64, 105 P.3d 376, 390 (2004) (emphasis added) (citing United States v. Ruiz, 536 U.S. 622, 629 (2002)). This is because impeachment evidence "is special in relation to the *fairness of a trial* not in respect to whether a plea is *voluntary*." Dunlap, 141 Idaho at 64, 106 P.3d at 390 (emphasis in original) (quoting Ruiz, 536 U.S. at 629); see also United States v.



Mathur, 624 F.3d 498, 507 (1st Cir. 2010) (“Ruiz teaches that *Brady* does not protect against the possible prejudice that may ensue from the loss of an opportunity to plea-bargain with complete knowledge of all relevant facts. This makes good sense: when a defendant chooses to admit his guilt, *Brady* concerns subside.”).

Impeachment evidence is that which is designed to discredit a witness, i.e. to reduce the effectiveness of his testimony by bringing forth evidence which explains why the jury should not put faith in him or his testimony. State v. Marsh, 141 Idaho 862, 868–869, 119 P.3d 637, 643–644 (Ct. App. 2004). Exculpatory evidence relates to a defendant’s guilt or innocence. State v. Porter, 130 Idaho 772, 781, 984 P.2d 127, 136 (1997).

In this case, any evidence regarding pending criminal charges against the C.I., or any agreement between the state and the C.I. regarding those charges and his participation in the controlled drug buy, was merely potentially impeaching, and not material to Baker’s guilt or innocence as to the crime of trafficking in methamphetamine. The state therefore had no duty to disclose this information prior to Baker’s guilty plea.

Further, Baker has also failed to allege facts demonstrating that he would have chosen not to plead guilty had he access to such potential impeachment evidence about the C.I. The value of such evidence in this case would be limited because it would not be particularly surprising to a jury that a C.I. had a pending criminal drug charge against him, and had some agreement with the state to participate in a controlled buy. Therefore, even assuming both that the state had

some duty to disclose information about the C.I. prior to Baker's guilty plea, and that the state failed to do so, Baker cannot demonstrate prejudice.

Baker has failed to allege facts, which if true, indicate that he was entitled to relief on his Brady claim regarding the C.I.'s pending criminal charges and agreement with the state. Baker has therefore failed to show that the district court erred in summarily dismissing this claim.

## II.

### Baker Has Failed To Show That The District Court Erred By Denying His Requests To Conduct Discovery

#### A. Introduction

Baker contends that the district court erred by denying his various post-conviction discovery requests. (Appellant's brief, pp.5, 13, 32.) Baker has failed to show that the district court abused his discretion because his discovery requests were premature, and because he cannot demonstrate that the requested discovery was necessary to protect his substantial rights.

#### B. Standard of Review

Discovery during post-conviction relief proceedings is a matter put to the sound discretion of the district court. I.C.R. 57(b); Raudebaugh v. State, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001) (citing Fairchild v. State, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996)). On review, the appellate court must determine whether the district court "acted within the boundaries of its discretion, consistent with any legal standards applicable to its specific choices, and whether

the court reached its decision by an exercise of reason.” State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994).

C. The District Court Properly Denied Baker’s Discovery Request

Idaho Criminal Rule 57(b) provides that, “the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the [post-conviction relief] proceedings unless and only to the extent ordered by the trial court.” Idaho Criminal Rule 57(f) limits discovery to prevent the state and the court from being inundated with discovery requests by applicants who are either unaware of proper methods or are simply on fishing expeditions. The Idaho courts have recognized that traditional discovery methods, normally applicable to civil cases, might be inappropriate in collateral proceedings. Jacobsen v. State, 99 Idaho 45, 50, 577 P.2d 24, 29 (1978); Aeschliman v. State, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999). In Raudebaugh, the Idaho Supreme Court explained, “Unless discovery is necessary to protect an applicant’s substantial rights, the district court is not required to order discovery.” Raudebaugh, 135 Idaho at 605, 21 P.3d at 927.

Further, “[i]n order to be granted discovery, a post-conviction applicant must identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his or her application.” State v. LePage, 138 Idaho 803, 810, 69 P.3d 1064, 1071 (Ct. App. 2003), *citing* Aeschliman, 132 Idaho at 402-03, 973 P.2d at 754-55.

In this case, Baker appears to assert that the district court erred by denying his discovery requests. (Appellant’s brief, pp.5, 13, 32.) However, on

appeal, Baker does not identify any specific discovery request or argue why such discovery was necessary either to protect his substantial rights, or even to support his post-conviction claims. This Court may decline to consider this claim on this basis. See Zichko, 129 Idaho at 263, 923 P.2d at 970.

In any event, Baker has failed to demonstrate error. In the course of the post-conviction proceeding below, Baker requested: a transcript of the grand jury proceedings; the audio recording of the controlled buy; the audio recording of a debriefing between the C.I. and police; and interrogatories and depositions from his defense attorney, three Idaho State Police Officers, and an alleged witness to the underlying controlled buy. (R., pp.50-52, 123-127.) He also subpoenaed an Idaho State Police Detective to appear at court even though no evidentiary hearing had been scheduled. (R., p.104.) The district court denied these requests and quashed the subpoena. (R., pp.121-122, 128.) Baker has failed to show that the district court abused its discretion.

First, Baker's discovery requests were premature. The district court did not outright deny Baker's discovery requests, but instead stated that it would not grant them "at this point," during the I.C. § 19-4906 summary dismissal stage of the post-conviction proceeding. (R., p.128.) Other courts have similarly conducted the summary dismissal procedure in this manner and allowed petitioners to renew their request for discovery at a later date. See LePage, 138 Idaho at 810, 69 P.3d at 1071; Aeschliman, 132 Idaho at 402-03, 973 P.2d at 754-55. The district court had no obligation to grant discovery prior to its summary dismissal of Baker's petition. Had Baker alleged facts which, if true,

demonstrated he was entitled him to relief as to any of his claims, he would have had the opportunity to further pursue those claims in an evidentiary hearing.

Additionally, the district court did not abuse its discretion because granting Baker's motion was not necessary to protect Baker's substantial rights. Baker does not adequately describe in the motion or on appeal how his substantive rights would be affected by the lack of discovery. The district court took judicial notice of the underlying criminal record (R., pp.45-47), and had full ability to evaluate whether Baker raised a genuine issue of material fact as to any of his claims.

Baker has failed to show that his discovery requests were necessary, at the time he made them, to protect a substantial right. He has therefore failed to show that the district court abused its discretion in denying these requests.

#### CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Baker's petition for post-conviction relief.

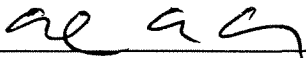
DATED this 16th day of March, 2015

  
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MARK W. OLSON  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of March, 2015, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

Donald V. Baker  
IDOC #49484  
ISCI Unit 15/B181A  
P.O. Box 14  
Boise, Idaho 83707

  
\_\_\_\_\_  
MARK W. OLSON  
Deputy Attorney General

MWO/vr