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Baker v. State Appellant's Brief Dckt. 41614

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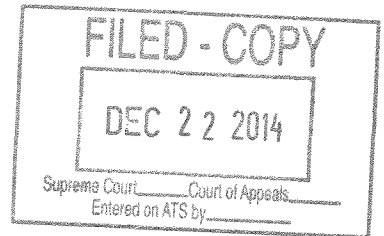
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Petitioner - Appellant Pro se



In the Supreme Court Of The State Of Idaho

Donald V. Baker,
Petitioner - Appellant,
vs.
State of Idaho,
Respondent.

Docket no. 41614
Petitioner - Appellant
"Brief" or Outline
For Appeal of Post-
Conviction Relief

Comes Now, Donald Baker; Petitioner -
Appellant / Pro se and offers the following
"Brief" or Outline addressing his appeal
issues of Petitioner's - Appellant "Petition

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For Post - Conviction Relief," to state and assert as follows:

- Summary -

The Petitioner - Appellant has filed with this Court, his Appeal from the decision or "Order of Dismissal," dated December 20th and filed on the 23rd day of December 2013.

In this light, the District Court had filed two (2) consecutive "Notice[s] of Intent To Dismiss," the filing dates on these "Notices" were April 23, 2013 and October 31, 2013.

And within these "Notice(s)," the Court in sua sponte - pursuant to I.C. § 19-4906(b) claimed; [the] Court, having considered the petition and the record, is satisfied that the Petitioner is not entitled to post-conviction relief and no purpose would be served by any

further proceedings....."

Moreover, the District Court asserted that this Petitioner - Appellant [h]as not asserted any new evidence to establish a Brady violation. [The] evidence was not exculpatory on its face and objectively would not lead a reasonable person in the defendant's position to withdraw his guilty plea and proceed to trial. And that the State intended to submit an audio recording of the Defendant selling one (1) ounce of methamphetamine to the confidential informant (hereinafter CI, CI 376, Agent or Actor)

In all of these connections, this Petitioner - Appellant asserts and appeals to this Great and Honorable Court, that of the District Court's bias and prejudicial mind set concerning the Petitioner - Appellant's claims for Post-Conviction Relief; thus, his challenging the effectiveness of

Counsel's representation, the volenteeriness and state of mind of this Petitioner - Appellant when he entered his plea of guilty, coupled with the magnitude of, as well as the malfeasance in connection to tainted, altered and misrepresented evidence on behalf of the prosecutor, the Idaho State Police and it agents, including CI 376. Notwithstanding the State's agent or CI 376 in connection with its "breach of Contract" issues with the State that was later discovered as a "Cover-up," to secure a conviction against this Petitioner - Appellant.

The Petitioner - Appellant hired an independent Counsel / Private Investigator - Riggins Law, P.A., Paul E. Riggins; to conduct an unbiased and independent inquiry as to the actions or inactions of Petitioner - Appellant's defense Counsel. In this way, what real evidence the state had to present within the scopes

of Idaho Criminal Rules and Procedure, Rules of Evidence, and Policies / Procedures, and Contractual Elements surrounding the States Confidential informant and his breach thereof.

Based upon this independent and unbiased inquiry - After the Fact; in regards to the pleading and sentencing phases of the underlying criminal case no. CR-FE-2010-0019696, and the Final Report submitted by the Office of Paul E. Riggins, this Petitioner - Appellant brought forth his original filing of this Petition for Post - Conviction Relief. If it was not for the operative facts that based upon the District Courts subtle and overt means of denying, delaying, Ordering the Removal of Discoverable materials and options thereof, notwithstanding the repeated denial of the Appointment of Counsel to Govern any (discovery) proceedings - thus, this Petitioner - Appellant has suffered from

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and continues to suffer from a total lack of due process in this Post-Conviction Proceedings, that has resulted into a case of "~~the~~ manifested Injustice."

- Introduction -

On April 3, 2013; the Petitioner - Appellant filed with the District Court his "Second Amended Petition For Post-Conviction Relief," in as much as this amended petition superceded his initial Petition For Post-Conviction Relief and the subsequent Motion To Amend Post-Conviction Petition. Therefore, the Petitioner - Appellant asserted that all previous claims presented in his prior pleadings were to be considered abandoned, unless presented within the Second Petition.

In the above way, this Petitioner -

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Appellant filed with the District his "Second Amend Petition For Post-Conviction Relief," asserting claims of Ineffective Assistance of Counsel; Due Process Violations and Prosecutorial Misconduct. He further asserts Brady Violations to an appalling degree; A Coerced Plea made to him by Defense Counsel and the Prosecutor's Office. The Petitioner further states that he was currently subjected to what has amounted to an Illegal Sentence - as his charge, at best, should not have been a felony conviction.

Petitioner asserts that had either the Prosecutor in this case had not tainted or altered the evidence in this case, and/or his Retained Counsel listened to him (Petitioner - Appellant) and looked into, /or at the Discovery Correctly; they would have seen and known these facts...

Instead, both Parties threaten the Petitioner - Appellant with a "Up To Life" sentence, if he did not Plead Guilty as

as charged.

- Argument -

In the Petitioner - Appellant's "Petition For Post-Conviction Relief" and specifically his, "Second Amended Petition For Post-Conviction Relief," he argues first - Ineffective Assistance of Counsel.

The Constitution of the United States; Amendment Six (6); and Article I. § 13 of the Constitution of the State of Idaho, guarantees in both Federal and State Courts and Prosecutions - That the "accused shall Enjoy the Right ... To have the Assistance of Counsel for his or her Defense.

This Right extends to both Retained and Appointed Counsel, and is examined using the same standards for both. A

Violation of the Sixth (6th) Amendment right and under Article I, § 13 of the Constitution of the State of Idaho - the Petitioner/Appellant has the right to the Effective Assistance of Counsel. Therefore, a violation of these inherent rights and privileges constitutes grounds for Habeas Corpus Relief or other Post-Conviction Relief.

The United States Supreme Court held in (U.S. v. Cronin, 466 U.S. 468) the "Importance of Counsel for Criminal Defendants," it states:

Lawyers in criminal cases "are necessities, not luxuries." Their presence is Essential because they are the means through which other rights of the person on trial or accused are secured.

Ineffective assistance claims are often analyzed and decided by the "Strickland" Rule.

(Strickland v. Washington, 466 U.S. 668, 104 S. Ct 2052, 80 L. Ed 2d. 674 (1984))

A Petitioner asserting a claim of Ineffective Assistance of Counsel must show:

- a) That his trial Counsel's performance "fell below an objective standard of reasonableness;" and,
- b) That "there is a Reasonable Probability that, but for Counsel's Unprofessional Errors, the Result of the Proceeding would have been different."

(Berg v. State, 131 Idaho 517, 960 P. 2d 738 (1998);

Aragon v. State, 114 Idaho 758, 760 P. 2d 1174 (1988);

Hasset v. State, 127 Idaho 313, 900 P. 2d. 221 (Ct. App. 1995)).

Because the Lawyer is Presumed

Competent to providing the Guiding Hand,
so to speak, that the Defendant needs -
The Defendant must show the Burden to
Demonstrate a Constitutional Violation.

Defense Counsel's actions from the earliest
stages of the Criminal Proceedings to the
bitter end have been assailed.

Six Amendment Challenges to Counsel's
representation cover the spectrum of the
Criminal Process at the Pre-Trial Stage.

They include, among others, the Reprimand
Hearing, Plea Negotiations, Investigations,
consultation with the Defendant and filing
Evidentiary and other Pre-Trial Motions.

Sixth (4th) Amendment Challenges at the
Trial Stages include, among others,

Counsel's Arguments and Defenses,
Prosecutorial Misconduct, Composition of

Jury, Presentation of Evidence or Testimony,

Jury Instructions, Courtroom Closure,
Continuances, Request for Competency Hearings,

Shackling of the Defendant, Moving for Mistrial, and Opening and Closing Arguments.

In the above connections, when a Petitioner alleges some deficiency in Counsel's actions (or omissions), or advice regarding a guilty plea, the Petitioner must demonstrate that "but for Counsel's errors, he would not have plead guilty," but would have insisted on going to trial.

(Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d. 203 (1985))

Idaho courts have long recognized the standard established in Hill.

(Booth v. State, 262 P. 3d 255 (2011); see also Ridgley v. State, 148 Idaho 671, 227 P. 3d. 925 (2010); Dunlap v. State, 141 Idaho 50; 106 P. 3d 376 (2004); Gilpin-Grubb v. State, 138 Idaho 76, 57 P. 3d. 787 (2002)).

The demonstration requirement announced in Hill turns on the idea that Counsel's ineffectiveness may have caused petitioner to forfeit a judicial proceeding to which he was otherwise constitutionally entitled to; to wit: a jury trial.

(see also Roe v. Flores - Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029 (2000).
Rodilla v. Ky, 130 S. Ct. 1473, 1482-83 (2010))

To ~~set~~ satisfy the prong of "Strickland," and Prove that Counsel's performance was Deficient - the Petitioner must show that "Counsel made errors so serious that [He] was not functioning at the "Counsel" guaranteed to the Defendant by the Sixth (6th Amendment).

In the case at hand, even with the District Courts non-existing means of restricting and/or flat denying the Petitioner his Post-Conviction Discovery options - He has met this Burden!

The Petitioner attests and asserts that his Counsel Refused to Investigate any and all of the Petitioners Defense Claims. Petitioners Counsel told Petitioner that, Quote:

"that if you (Petitioner) takes this case to trial, the state will give you an "up to life in prison... (for the persistent violator), and you only paid me \$6800.⁰⁰ and I told you it would cost \$15,000.⁰⁰ to go to trial...." unquote. The Petitioner's Counsel urged the Petitioner to simply Plead Guilty to this Charge.

Representation is a true art, an act or omission that is unprofessional in one case, may be sound or even brilliant in another.

Strategic choices made after a thorough investigation of law and facts relevant to Plausible ~~opt~~ options are virtually unchallengable, however, even when making strategic decisions, Counsel's conduct must be Reasonable.

(*Proe v. Flores - Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. ed. 2d. 985 (2000))

Furthermore, tactical and strategic decisions of Counsel which foreshadow Counsel's advise to enter a guilty plea which are based on inadequate preparation, ignorance of relevant law or other objective shortcomings may constitute ineffective representation.

(*Ridgley*, 262 P. 3d. @ 261; *Howard v. State*, 126 Idaho 231, 234, 880 P. 2d. 261, 264 (Ct. App. 1994))

The Petitioner again asserts that in this Premise, he has again met his Burden. In this case -

There Existed
No Strategie whatsoever!

There was no Investigation; No Defense talk of any meritable kind; There Only Existed the "Let's Plead Guilty" mode, and if you don't - you will get "up to life" statements," unless you provide more money for trial" statements.

The Petitioner Pleaded With Defense Counsel to Investigate into his defense claims, along with the ~~Confidential~~ Informants "Breach of Contract" issues with the State, and the states obvious subtle and overt means of not disclosing and altering evidence matters. His Retained Counsel opted not to, and showed No Interest in Defending the Petitioner.

In this case, Defense Counsel Argued Nothing ~~that~~ that would even remotely be arguable in any kind of Appeal. Defense Counsel Prepared No Defense, Nor Sought One.

Furthermore, at the "entry of guilty" phase on March 3, 2011; Defense Counsel conceded to, among other things or issues,

vague and ambiguous terms or deals,
such as:

- a) the state will be dismissing in its entirety,
Case no. CR-FE-2010-14470....
However, the state is free to argue
the facts of that case.

(Entry of Plea @ page 4, lines 21-25)
page 5, lines 1-3)

- b) restitution will be sought; the defendant
agrees to pay a reasonable amount. We
don't have a figure yet...

(Entry of Plea @ page 5, lines 15-22)

- c) Then Defense Counsel concedes by stating:

"In Principal, he [the Defendant]
agrees with the concept..."

d) At the "Entry of Plea," the Defendant (Petitioner) clearly establishes his understanding from Defense Counsel that he "may be eligible for a referral to Mental Health Court, or even a Rider Program."

(Entry of Plea @ Page 9, lines 21 - 25)
Page 10, lines 1 - 25)

In all of the above connections, Defense Counsel had used every available means to secure a "Guilty Plea" from this Defendant, including adding the Perpetual "Last Nail In The Coffin," so to speak. Defense Counsel Helped the State in securing the Plea at all Cost!

"To State that these Actions "fell below the standard of Reasonableness is an understatement," at best.

The second (2nd) argument of the "Brady Rule" touches on it immensely.

The "Brady Rule" (Brady v. Maryland; 373 U.S. 83, 86, 83 S. Ct. 1194, 10 L. ed. 215 (1963))...

Is based on the Requirement of Due Process. Its purpose is not to displace the adversary system as the primary means in which truth is uncovered, but to assure that a mis-carriage of Justice Does Not Occur. Thus, the Prosecutor is not required to deliver his Entire file to Defense Counsel, but Only disclose favorable evidence to the accused, that if suppressed, would deprive the Defendant of a fair trial.

(see U.S. v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 82 L. ed. 2d. 481 (1985)).

(see also - Babcock, "Fair Play;" evidence favorable to an accused and effective

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assistance of counsel, 34 Stan L. Rev.
1133 (1986)

Also... Cannon, "Prosecutors Duty to Disclose,
52 Marv L. Rev. 516 (1969)).

Thus, although the state is obliged to
"Prosecute with earnestness and vigor; it is
as much [its] duty to refrain from
Improper Methods calculated to produce
a wrongful conviction as it is to use every
legitimate means to bring about a just one.

Many cases have developed over the
years to define the scope of Brady. The Courts
have clarified that there exist three (3)
components of a Brady type Prosecutorial
Misconduct claim - the evidence issue
must be favorable to the accused;
that evidence must of been suppressed by
the state, either willfully or inadvertently;

Petitioner asserts that all three (3)

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Components exist in this case and are very much evident.

In these ways, this Petitioner - Appellant, after his Judgement and Conviction, hired an unbiased and independent Counsel - Paul E. Riggins, to conduct another investigation surrounding the enclosed matter and found that the State failed to disclose the following:

- A) That "CI 376" committed new Felony Crimes after entering into more than one Deal(s) and Contract(s) with both the Prosecutor's Office and the Idaho State Police.
- B) That because of these felony crimes, "CI 376" entered into further deals and contracts with the state in exchange for information and/or favorable convictions.

(see Riggins Letter @ Court Record pages 000229 -

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000230)

Also see "CI 376" Felony Complaint documents, Information, Judgement / Conviction Order @ Court Record pages 000183 - 000196)

- c) That there were certain breaches in the contracts between the State and "CI 376," that resulted in, but not limited to, the tampering of, altering or redacting of favorable evidence to this Petitioner - Appellant.
- d) That there was a hidden and/or a redacted portion of the audio / CD of "CI 376" and his roommate "Crashing," so to speak, in as a third (3rd) party - Jason Whitaker; in this way, Whitaker's appearance caused the Idaho State Police to "Loose Control" over its "Controlled - Buy."
Please note: Whitaker was never pulled over, nor searched after this direct

Contact with "CI 376."

(see Affidavit of Jason S. Whitaker @
Court Record pages 000159 - 000160).

The Prosecution had at all times during the course of this Prosecution or Case, the contracts within their office, between the state and "CI 376"; yet they failed to disclose the CI, or the third (3rd) party invasion, nor the contracts entered into on ~~her~~ behalf of the State.

The Petitioner, also brought this up to counsel - all fell on deaf ears.

The Petitioner asserts that it would be different possibly had his prior convictions not happened in the same County.

For the Prosecutor to make a Deal with the Petitioner - Induce a plea by that deal - Then a District Judge to Agree to that

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Deal - Enter into the same Deal with the
Petitioner:

Only to secure the Deal through
lies, trickery and altering evidence...

These actions by the Prosecution and
State screams misconduct; Breach of
Contract (Plea Agreement) and malfeasance
by the Prosecutors Office.

The Petitioner has a absolute right
to be able to trust the word of a Prosecutor
in this Country - they are suppose to be
the most moral, ethicial and honest people
in the Court room in this Country -

IF this Petitioner can not trust
the word or the Actions of a Prosecutor
in this Country — then Who can he
really trust!

A Plea Agreement agreed to by all

parties involved, to include the Judge, is a Legal Binding Contract.

There exist numerous case law and precedence that covers this, along with Plea Agreements in general... such as...

Any Plea that is made under duress, coercion, or by Promises are not kept, make them involuntary Pleas, or Induced Pleas are also now made Involuntary if the state fails to disclose (Brady Violation), or reneges on that agreement.

All of these are the case at hand. The State secured a Plea Bargain based upon lies, trickery and deception, failed to disclose numerous discoverable and favorable information, including several contractual agreements and plea agreements in connection with "CI 376" in this matter - and ~~threat~~ threatened this Petitioner-Appellant with "Up to life" sentence in this case to secure this conviction.

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Once again, the Petitioner has met his Burden in his allegations upon the state.

The Courts have made it very clear that the "Brady Duty" extends to Impeachment Evidence as well as exculpatory evidence, and it requires disclosure of not only Information known to the Prosecutor, But All Information in the Possession of the Prosecutors Office, the Police, and others acting on behalf of the Prosecutor.

Moreover, the Prosecutor(s) is under a Duty To Disclose, Even Absent A Request By Defense Counsel.

None of this was done in this case obviously, or there would have existed no felony conviction

Prejudice in the Brady context is defined by the concept of Materiality - Favorable Probability that, had the evidence been

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Disclosed to the Defense, the Results of the Proceedings would have been different.

A "Reasonable Probability" is a probability sufficient to undermine the confidence in the outcome of the trial. The impact of the suppressed evidence must be considered cumulatively, not individually.

Once again, had the Prosecutors Office went by; or Disclosed the redacted statements and portions of recorded audio tapes or CD's, along with pertinent information concerning Agent / "CI 376" and their contracts with Defense Counsel... The Petitioner - Appellant would not be in Prison Doing time on this Felony Crime.

The "States" or "Governments" obligation to make such disclosures is Pertinent, not only to the accused Preperation for trial, but also to his determination of wether or not to plead guilty. The Defendant is

Absolutely entitled to make that decision with full awareness of favorable material evidence known to the state or Government. Thus, while decisions regarding investigations etc., often involve strategic choices, counsels strategic decisions must be supported by a thorough investigation.

Petitioner - Appellant asserts that in this case, none of this was done —

The State Disclosed Nothing of the Past Deals or Contracts with there Agent/ "CI 376," nor disclosed any material they altered or hidden from Defense Counsel —

Nor did Defense Counsel seek any Documents / materials the State had in its possession.

Had they done so... The Petitioner - Appellant would, once again, not be in

Prison on a Felony Crime

In the case at hand, this has happened by the state not correcting the injustice it created. The State has ignored this Petitioner - Appellants Due Process Rights because of their Intentional and deliberate acts, actions and inactions, thus causing the Petitioner Loss of Liberty and Property because of his incarceration.

The Petitioners Rights were violated in this case and continue to be violated everyday that this is not corrected. The state knew this at the time and owes the Petitioner - Appellant the Duty to Correct this.

In Brady, if a Constitutional error is found, the Error cannot be found harmless; The conviction must be set aside. The remedy for a Brady Violation is typically a new trial, at which the previously excluded evidence is admitted. In rare circumstances,

Where the District Court only goes by what the Prosecution and Defense Counsel tell it, the Court now knows

In all of these enclosed connections, the Petitioner-Appellant asserts that where he is ~~arguing~~ arguing at the Appellant level is that ~~the~~ the District Court erred is at failing to at the very minimum, to afford the Petitioner any reasonable Discovery, or Discovery Options (Counsel), much-less an Evidentiary Hearing for his Post-~~Conviction~~ Conviction Petition.

however, a court may find that the Governments Due Process Violations was so flagrant as to require Dismissal of the case to avoid prejudice to the Defendant.

Petitioner has once again met his burden proving the Due Process Claims as stated in his Petition.

What the state has hidden from the Court, through the Petitioner's Due Dilligence by hiring an Independent Counsel to conduct an investigation. In this case, the State has induced the Court to be a part of the injustice that has taken place in this case.

Finally, the Petitioner - Appellant states in a Post-Conviction Petition, the Affidavit must be deemed as being true.

In the Petitioners Affidavit, he asserted all of these claims and should have survived Summary Judgement of Dismissial.

For the state to Manipulate anyone with deceptions in any agreements, is not harmless... It IS Fraud! It commits the very crimes in which it is sworn to fight. That is what happened in this case.

Once again, the Petitioner is owed a

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duty by the state to be treated Fairly. All Citizens are... This is called Equal Protection, when the State resorts to lies and trickery to secure a wrongful Conviction, it is a sad day in the Justice system.

This case must be remanded back to the District Court and set for proper Discovery and an Evidentiary Hearing.

Wherefore, the Petitioner - Appellant respectfully request this Honorable Court to Deny any of the States Brief or Motion of Opposition in their Entirety; and to remand this matter back to the District Court for proper disposition and to further afford this Petitioner a Discovery and an Evidentiary Hearing.

Respectfully Submitted:

Donald V. Baker
Donald V. Baker
Petitioner - Appellant Pro se

Certificate of Service

I, Donald V. Baker, Certify that on this 17th Day of December 2014, I have mailed a True and Correct Copy of the foregoing "Petitioner-Appellant" Brief or Outline For Appeal of Post-Conviction Relief," to the following.

Clerk of Court
Idaho Supreme Court
P.O. Box 83720
Boise Idaho 83720

Office of the Attorney
General
P.O. Box 83720
Boise, Id 83720

By placing the same in the U.S. mail Depository @ the ISCI Legal Resource, Located in Boise, Idaho.

Dated this 17th Day of December 2014.

Donald V. Baker

Donald V. Baker
Petitioner - Appellant Pro Se.

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