8-22-2014

Dalrymple v. State Appellant's Brief Dckt. 41620

8/18/14

SUPREME COURT OF IDAHO

DAVID DALRYMPLE
PLAINTEFF
VS.
STATE OF IDAHO
DEFENDANT

CASE NO.
41620-2013
ADA COUNTY NO. 2013-14732
REF. NO. 14-289

SUCCESSIVE POST-CONVIETION.

ANY DEFENDANT HAS A RIGHT TO DUE PROCESS
GEVEN TEMIE TO PREPARE A DEFENSE
ALLOWED TO PRESENT EVIDENCE
THE RIGHT TO QUESTION WITNESSIES

THESE RIGHTS WERE DENIED AT TRIAL.

FURTHER THE STATE HAS A COMPULSORY OBLIGATION.
TO PROVIDE OPPORTUNITY, AND IF NECCESARY
ASSIST IN GATHERING EVIDENCE TO PROVE
INNOCENCE.
TO PROVIDE COMPETENT & EFFECTIVE COUNSEL
ABLE TO ASSIST IN THE PRESENTATION OF EVIDENCE.

THE DISTRICT COURT HAS CONSISTENTLY
IGNORED IT'S OBLIGATEON.

THE UNIFORM POST-CONVICTION ACT IS THE MEANS FOR CHALLENGING A WRONGFULL CONVICTION OR SENTENCE. IN THIS CASE I HAVE BEEN WRONGFULLY CONVICTED AND THE SENTENCE DOESN'T FIT WHAT I WAS CONVICTED FOR.

I AM NOT TRAINED IN THE LAW, BUT I DO UNDERSTAND THE ENGLISH LANGUAGE. AT MY ORIGINAL TRIAL D'ANGELO, WHO WAS MY TRIAL COUNSEL FAILED TO BRING OR SUBPOENA EVIDENCE THAT WAS AVAILABLE AT THE TIME OF TRIAL. AT MY POST CONVICTION SWARTZ, WHO WAS MY ATTORNEY THEN, FAILED TO INTERVIEW WITNESSES, SECURE AN EXPERT IN HYPNOSIS, SUBPOENA EVIDENCE, AND LIED WHEN HE STATED HE DIDNT NEED TO IN ORDER TO WIN THE CASE. THESE ITEMS WERE NOT EFFECTIVE IN THE PRESENTATION OF EVIDENCE IN ORDER TO PROVE KELSEA BRETON WAS NOT MOLESTED AND A KIDNAPPING DID NOT TAKE PLACE. THESE ALLEGATIONS ARE CONFIRMED WITH THE STATEMENTS MADE BY D'ANGELO HIMSELF AND McGLOCHLIN, AT THE AUGUST 11 2009 POST CONVICTION HEARING.

GREG SILVEY, MY NEXT ATTORNEY CLAIMED I HAD TO DISMISS ANY PROCEEDINGS IN STATE COURT BEFORE THE FEDERAL COURT WOULD HEAR MY CASE, JUDGE MOODY, OR JEAN FISHER CLAIMS THAT BECOUSE THE CASE LEFT STATE COURT TO GOTO FEDERAL COURT THAT SOMEHOW IT IS ANOTHER CASE AND THE DATE OF SEP 19 2012 IS NOT AN ACCURATE TOLLING DATE. ONE OF THEM IS WRONG.

IF SILVEY'S ADVISE TO DISMISS MY PROCEEDINGS BEFORE ENTERING FEDERAL COURT WAS THE WRONG THING

TO DO THEN HE IS AS INEFFECTIVE AS D'ANGELO & SCHARTZ. IF INEFFECTIVE ASSISTANCE EXISTS ON THE PART OF SILVEY THEN THIS PETITION IS PROPERLY FILED.

IDAHO CODE SS 19-4902 STATES POST-CONVICTION PETITIONS BE FILED WITHIN ONE YEAR FROM THE EXPERATION OF TIME FOR APPEAL, THE DETERMINATION OF AN APPEAL, OR FROM THE DETERMINATION OF A PROCEEDING FOLLOWING AN APPEAL.

IT DOES NOT SPECIFY WHICH COURT THE CASE NEEDS TO HAVE A DETERMINATION FROM, ONLY THAT THE DETERMINATION APPLY TO THE SAME CASE.

THIS CASE HAS BEEN FILED WITHIN THE TIME CONSTRAINTS MANDATED BY THE STATE OF IDAHO.

IN JUDGE MOODY'S NOTICE OF INTENT TO DISMISS DATED 13 SEPT. 2013, SHE STATES "DAIRYMPLE HAS NOT DEMONSTRATED OR ALLEGED THAT ANY SPECIFIC GROUND FOR RELIEF RAISED IN HIS INITIAL POST-CONVICTION PETITION WAS INADEQUATELY PRESENTED BY POST CONVICTION COUNSEL.

SCHARTZ FAILED TO BRING EVIDENCE ABOUT HYPNOSIS. FAILED TO SECURE AN EXPERT IN HYPNOSIS, FAILED TO INTERVIEW WITNESSES.

THE TRASCRIPT FROM JULY 20 AND AUGUST 11, 2009 POST-CONVICTION HEARING VERIFY THESE ALLEGATIONS. IN ADDITION I HAVE AND AM PROVIDING EXAMPLES TAKEN FROM BOOKS ON HYPNOSES AS NEW EVIDENCE. WHICH SHOULD HAVE BEEN PRESENTED AT THAT TIME.

PRELIMINARY
TRIAL
APPEAL
POST-CONVICTION — APPEAL OF POST-CONVICTION.
HABEAS

THIS IS THE ORDER OF HEARINGS AS EXPLAINED BY ATTORNEYS IN MY CASE. THERE WAS NEVER MENTION OF SUCCESSIVE POST-CONVICTION HEARING. I DID ATTEMPT TO PURSUE APPEALS OF MY POST-CONVICTION AND IN THE END WAS INFORMED AND ADVISED BY MY ATTORNEY AT THAT TIME "GREG SILVEY" TO ASK THE COURT TO DESSMIS ALL PROCEEDINGS THEREBY ALLOWING ME TO PURSUE HABEAS.

I WAS ALSO INFORMED I COULDN'T FILE INEFFECTIVE ASSISTANCE AGAINST MY POST-CONVICTION COUNSEL. CHRISS SCHWARTZ AT THAT TIME.

SINCE THAT TIME IT IS MY UNDERSTANDING THINGS HAVE CHANGED, WITH THE DECISION IN THE MARTINEZ V. RYAN, CASE IN WHICH THE SUPREME COURT DECLARES IT IS MORE IMPORTANT FOR COUNSEL TO BE EFFECTIVE AT POST-CONVICTION BECOUSE THEY HAVE A RESPONSIBILITY OF CORRECTING MISTAKES MADE BY TRIAL COUNSEL. MARTINEZ WAS DECIDED IN 2012.

I STILL HAD MY CASE IN HABEAS AND WAS UNDER THE UNDERSTANDING I COULD ONLY HAVE ONE ACTIVE CASE AT A TIME. FROM THE START OF THES CASE I HAVE LISTENED TO OFFICERS OF THE COURT EXPLAIN TO ME THAT THES IS THE PROCESS IN THIS ORDER.

NOW AS I READ YOUR DECISION AND JEAN FISHERS ARGUMENT, THEY SAY SOMETHING DIFFERENT.

TODAY IT IS MY UNDERSTANDING THAT I CAN FILE A POST-CONVICTION FOR ANY OF THE FOLLOWING REASONS. AT ANY TIME.

1 NEW EVIDENCE. / 4. IMPROPER SENTENCE
2 INEFFECTIVE ASSISTANCE.
3 INEFFECTIVE ASSISTANCE OF POST CONVICTION COUNSEL.

I CAN FILE A HABEAS FOR VIOLATIONS OF CONSTITUTIONAL AMMENDMENTS. SUCH AS.

1 CONFLICT OF INTREST
2 DENIAL OF DUE PROCESS
3 DENIAL OF RIGHT TO CONFRONT
4 CONSTRUCTIVE DENIAL OF COUNSEL BY THE DIST. COURT
5 CONFLICT OF INTREST BY TRIAL COUNSEL
6 INVOLUNTARY AND UNTIMELY WAIVER TO PROCEED PRO SE

I AM UNTRAINED IN THE LAW. I AM INCARCERATED AT A FACILITY WITHOUT BENEFIT OF A LEGAL PERSON TO ADVISE OR POINT TO WHAT NEEDS DONE NEXT.

IN MY FILEING YOU WILL FIND STATEMENTS OF FACT REGARDING EACH ISSUE PRESENTED ABOVE.

I HAVE LEARNED NOT TO EXPECT FAIR MINDEDNESS OR REASON FROM THE DISTRICT COURT.

YOU MAY MAKE A DECISION ON ANY ISSUE YOU FEEL HAS SMERIT. THERE ARE FACTS TO PROVE EACH ISSUE LISTED.

I WANT TO BE SURE THE STATE HAS OPPORTUNITY TO CORRECT IT'S MISSTAKES BEFORE MOVEING ON TO FEDERAL HABEAS. THANK YOU. [illegible]

Inmate Name David Dalrymple
IDOC No. 74871
Address Kit Carson Correctional center
PO. Box 2000
Burlington, Co. 80807

IN THE DISTRICT COURT OF THE 9th JUDICIAL DISTRICT OF THE STATE OF IDAHO,AND FOR THE COUNTY OF ADA

David Dalrymple
petitioner
vs.
State Of Idaho
respondent

Case No. H0301506 & H0301629

SUCCESSIVE PETITION AND AFFIDAVIT FOR POST CONVICTION RELIEF.

STATEMENT OF FACT.

Throughout all of the legal proceedings that have taken place in this matter-including trial, appeal from convictions that resulted at trial, the subsequent post-conviction proceedings, the appeal from those post-conviction findings, and now this successive post-conviction- Mr.Dalrymple has steadfastly alledged that he is not guilty of the sexual molestation charges because he had only hypnotized Kelsea Breton to believe that she has been molested,but in fact she had never been actually physically molested by him.

Dalrymple alledged that he performed this hypnosis upon Kelsea in order to keep her safe. On professional and ethical grounds Mr.Dalrymple's trial counsel disagreed with Mr.Dalrymple concerning the presentation of a defense, and the presentation of any defense evidence in respect to the possible hypnosis of Kelsea Breton. (see Trial Tr. pg.349,thru 353) and (P.C.Tr.pg.117,L.10 to pg.117) At the close of the May 2004 trial Dalrymple protested to the court that his trial councel had not presented his hypnosis defense. (Trial Tr.pg.395,thru406.)

The trial court listened to the rationale for not presenting the hypnosis defense thathad beenproffered by Mr.Dalrymple. The court then allowed defense councel to further undermine Dalrymple's defense by claiming a "conflict" prevented him from presenting or investigating Dalrymple's defense. The court then gave Dalrymple the ultimatum to either discharge his attorney in order and proceed pro-se if he wished to present evidense, or, keep D'Angelo as his counsel and concede that the case was now closed.(Trial Tr.pg.407, 408)

Dalrymple was unsuccesfull at his Post Conviction hearing largely due to his now paid attorney's inability to find an expert in hypnosis, and his negligence with the issues.

Dalrymple askes that the Court Overturn his Convictions in full, Vacate his Senteces, and, Remand .

Thank You, Respectfully,

David Dalrymple.

David Dalrymple.

STANDARD OF REVIEW.

An applicant for post conviction relief has the burden of proving, by preponderance of the evidence, the allegations on which the claim is based. Idaho Criminal Rule 57(c);Estes v.State,111 Idaho 430,436,725 P.2d 135,141(1986);Clark v. State,92 Idaho 827, 830, 452 P.2d 54,57(1969).

A claim of ineffective assistance of counsel may be properly brought under the post-conviction procedure act. Murray v.State, 121 Idaho 918,924-25, 828 P.2d 1323,1329-30(Ct.App.1992)

A successive petition for ineffective assistance of counsel may also be brought under the post-conviction act, as post conviction is the petition designed to address ineffective counsel issues. Martinez v. Ryan,U.S. Court Of Appeals (9th Cir. 2012) Without adequete representation in an initial-review collateral proceeding a prisoner will have similar difficulties vindicating ineffective assistance at trial claim. The same would be true if the state did not appoint an attorney for the initial-review collateral proceeding A prisoner's inability to present an ineffective-assistance claim is of a particular concern because the right to effective trial counsel is a bedrock principal in this nation's justice system.

To prvail on an ineffective assistance of counsel claim,the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiancy. Strckland v, Washington,466 U.S.668,687-88(1984);Hassett v.State,127 Idaho 313,316,900 P.2d 221,224(Ct.App.1995) To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. Aragon v.State,114 Idaho 758,760,760 P.2d 1174,1176(1998) To establish prejudice,the applicant must show a reasonable probability that, but for the attorney's defitiant performance, the outcome of the trial would have been different.Id.at 761,760 P.2d at 1177. Tactical or strategic decisions of counsel will not be second guessed unless those decisions are based on inadequete preperation, ignorance of relevant law, or other shortcomings capable of objective evaluation. Howard v. State,126 Idaho 231,233,880 P.2d 261,263(Ct.App.1994)

THE UNIFORM POST-CONVICTION ACT is" the exclusive means for challenging the validity of a conviction or sentence" other than by direct appeal.Rhoades v. State,148 Idaho 215,217,220 P3d 571,573 (2009)

ISSUES PRESENTED. #1

Dalrymple was denied effective assistance of counsel as a result of his trial counsel's failure to request a pre-trial proceeding to determine both the existence, and the potential prejudicial effect of, confabulated witness testimony arising from hypnotic suggestion.

ISSUE #2

Dalrymple was deprived of his right to confront and cross examine his accusers.

ISSUE #3

Involuntary and Untimley Waiver to Proceed Pro-Se.

ISSUE #4

Ineffective Assistance of Counsel Due To

Conflict of Interest.

ISSUE #5

Constructive Denial of Counsel.

ISSUE #6

Incompetent to Stand Trial.

ISSUE #7

Counsel's Cumulative Errors.

ISSUE #8

ABUSE OF Disccretion

ISSUE #9

INEFFECTIVE Assistance by Counsel on Collateral Proceeding.

ISSUE #10

Dalrymple was deprived of his 5th Amendment Right of Due Process

His 6th Amendment Right of Confrontation, and, Compulsory-Process, and, Counsel for his Defense.

His 8th Amendment Right that Excessive Bail shall not be Required,

Nor Excessive Fines Imposed, Nor Cruel and Unusual Punishments

Inflicted. and, Dalrymple has been DEprived of his 14th Amendment Rights thru DEprovation of Liberty Without Due Process,

and the constructive Denial of Equal Protection of the Law.

ISSUE

Dalrymple was Denied Effective Assistance of Council at trial as a result of his trial councel's failure to investigate, and failure to request the pre-trial procedure for the determination of the existence of,and potentially prejudicial effect of, witness testimony arising from hypnotic suggestoin.

Dalrymple has consistently maintained that he never commited any of the physical acts upon Kelsea that were the basis for his conviction of the sexual molestation charges. He has consistently maintained that Kelsea's testimony at trial was the result of false memories of sexual molestation that Dalrymple had placed in Kelsea's mind as the result of hypnosis.

Dalrymple clearly wanted to present hypnosis, and evidence of hypnosis as the foundation of his defense. Mr.DeAngelo's failure to investigate left Dalrymple unprepaired. Mr.DeAngelo addmitts at the questioning of the court that he doesn't understand how to establish foundation,There is no education,and it makes no sense to him, and to him that is tantemount to asking the jury to come back with a guilty verdict. DeAngelo goes on to claim"we have no scientific background that we could establish this" See Trial TR. Pg.349,350)

On the same pages DrAngelo makes it clear he never spoke with Shelley or Kelsea. Never asked the court to be allowed an intrview, and at the April 7th hearing told the court speaking with Shelley or Kelsea wasn't necessary.See pre trial April7th)

At trial both the prosecuting attorney and Dalrymple's trial counsel relied upon the same Idaho precident-Statev.Iwakiri, 106 Idaho 618,682 P.2d571(1984)-as providing the legal basis under Idaho law for determining whether testimonyby a witness should be admissibleafter having undergone hypnosis which could have potentially altered memory,or even implanted false mrmories, in respect to proposed testimony that is to be presented at trial by that witness. Since Mr.DeAngelo knows of and has read Iwakiri well enough to rely on the precedents ther, he would also have known about The Idaho Supreme Court adopting a pre-trial procedure by which such potentially tainted testimony could be challenged and tested. Mr.DeAngelo's claim of "no scientific background" must have been an error. Or a lie.

Even if such testimony were determined to be admissiblr, it could still be challenged and limited to both weight and credibility as a result of the hynosis.

Under the Iwakiri decision the question as to whether proposed testimony to be presented by a witness at trial has been tainted by hypnosis is a question for the trial court to determine at a pre-trial hearing. the district court at the post conviction hearing in this case indicated that this would be the procedure that should be followed if its decision denying post-conviction relief is reversed avd the case remanded:

(Tr. pg.29,L. 23 to pg.30 L.6)

If a new trial is ordered in this case,I'm not sure that necessarily,Ihave to go there in terms of we do have the earlier precidence cited by both of you from the Supreme Court regarding testimony that is elicited through hypnotism, but I think that that's another step in the event that the court were to grant a new trial, we would probably have a pre-trial hearing in that regard.

In the course of STATING findings of fact at the close of the post-conviction hearingJudge McGloughlin declared that those facts concerning this issue of potentially hypnotically-tainted testimony were entirely absent from this case.(Tr.pg..206,L.5 to pg.207,L.8)

There is no evidence before this court from a hypnotist that this testimony and the incredible suggestion made to a child that she has been sexually abused, when in fact , she has not been sexually abused, and for this theory or defense imposed by Mr.Dalrymple, there's no showing that such a suggestion, hypnotic suggestion is even possible. Perhaps, it is possible, butI'd have to speculate.

THe burden is upon the petitioner to show that, A, this hypnosis ocured, perhaps, through having a hypnotist interview the victim or review their testimony. I would simply have to speculate as to whether or not an expert in hypnosis couldhave come in and said, well,this is all, not only possible, but it's highly probable. I just have nothing.

And again, I I know that both Mr. DaNgelo and frankly, Mr.Schwartz, you've tried today to do your best to find somebody that could come in and kind of focus on these issues and structure them in a way where the court could look at this and say,okay, well an expert has said he has an opinion that perhaps this childs

testimony had the kind of syntax and rythm to it that indicates that she may have been hypnotized; that this kind of hypnotic suggestion is possible, and could, in fact, have taken place. It's all speculation.

Although Judge McGloughlin, based upon professional and ethical concerns had excused Mr. Dalrymple's trial counsel from any obligation to elicit any testimony concerning the potential effects of hypnotically-alterd testimony in this case. The district court also noted that this was one area where the performance of Mr.Dalrymple's trial council had in fact been deficiant:(Tr.pg. 212, L. 17 to pg. 213, L.6)

based upon those findings the court then would conclude that the totality of the evidence here, that there was no ineffective assistance of counsel with that one somewhat minor exception, and that was whether or not Mr. DeAngelo had fully and completely attempted to find an expert on hypnosis.

And when you look at the standard in Strickland,again I don't want to send the higher court a conflicing ruling on this, but I think it may be that there could have been possibly a little more effort in that area. I frankly,cannot find from the totality of the evidence that that one issue rose to the level of ineffective assistance of counsel.

A substantial portion of the Iwakiri decision is composed of Justice Bistline's dissenting opinion. 106 Idaho at 627-654, 682 P.2d at 580-607. although not authoritative in respect to new principles of law, or as the rule of decision announced in that case, Justice Bistline's citation to additional facts based upon the record on appeal in that case that were not referanced in the majorityopinion, and his citation to other persuasive authorities does provide reliable background information that is relavant to the determination of the issues raised on this case.

In fact Justice Bistline sets out in his dissenting opinion a number of extensive quotations from the transcript in that case that are quite informative as to similar issues that are presented to this court. For example,one of the defense experts who testified in the Iwakiri case, Dr.Bishop Basil Rhodes, discussed the use of "identical phraseology" or "mirrored phrases" as an indicator of hypnotically-influenced testimony, which may be the source of the district court'sdecloration in this case concerning the absence of

any evidence in the record that indicaied that,"this child's testimony had the kind of syntax of rythm to it that indicates that she may have been hypnotized.." Tr.pg.207 LL.3-5) Of course,the absence of that evidence is the direct result of the failure of Mr. dalrymple's trial council to even make an attempt to elicet that testimonythrough the pre-trial procedure that was outlined by the majority in the Iwakiri decision.

Two very telling issues that were present in this case-the apparent absence of qualified experts, and the question of Mr.Dalrymple's qualification as a hypnotist-were also present in the Iwakiri case.

Mr. Dalrymple's trial council(Mr.DeAngelo) testified at the post-conviction hearing as to his inability in 2004 to obtain any expert witnesses in hypnosis.(see P.C. Tr.pg.119 L.5 to 18) Yat almost a quarter of a century earlier,in the early 1980's the defense in the Iwakiri case,which also was heard and determined in Boise, was able to procure two expert witnesses: Richard Hannebaum and Dr. Bishop Basil Rhodes.106 Idaho at 641,682 P.2d at 594. The testimony of these two defense experts as to potential hazards posed by hypnoticaly-influenced testimony is extensively set out or summarized in Justice Bistline'sdissent.106 Idaho at 627,-654,682 P.2d at 580-607) The citation to this expert testimony on the effects of hypnotism on the reliability of trial testimony was bolstered by citations to other legal authorities, including questions concerning the existence of implanted false memories.(106 Idaho at 648-649 P.2d at 106-02)

It is significant to the second issue, as to Mr.Dalrymple's own qualifications as a hypnotist, that in the Iwakiri case the initial hypnosis session also had been conducted by a seemingly unqualified individual, a Boise Police Department detective,whose testimony was objected to at trial "on the grounds that Detective Anderson was not qualified to conduct the hypnosis session,but the court allowed his testimony.Rpt.Tr.V.6,p.662-66." (106 Idaho at 637,682 P.2d at 590. Detective Anderson was cross examined about his qualifications to conduct the hypnosis session.Rpt Tr.V.6,p.873 et seq; ID.

The majority opinion in Iwakiri rejected any of the 'per se" rules formulated by other courts concerning the admissibility of hypnoticaly-affected testimony and instead adopted a rule for determining competency based upon an evaluation using six enumerated safeguards. 106 IDaho at 625,682 P.2d.at 578. The majority further noted that," It would be an unusual case if all of the mentioned safeguards were followed" 106 Idaho at 626, 682 P.2d at 579.

These six safeguards were specifically formulated to address the question of hypnoticaly-enhanced testimony for the puposes of prospectively refreshing the recollection of facts by a witness, which was the question that was presented in the Iwakiri case. Although a different situation was presented in this case,involving the question of whether false memories had been previously hypnoticaly implanted in a witness, both the prsecution and the defense in this case relied upon the safeguards announced in the Iwakiri case as establishing the necessary foundational elements for the addmission of the hypnosis theory that was advanced by Mr.Dalrymple as the foundation of his defense in the case.

Notwithstanding the fact that the Iwakiri safeguards were designed to be implemented in respect to the prospective use of hypnosis,the implimentayion of those safeguards, or similar safeguards in respect to a witness who is alleged to have been previously subjected to hypnosis, through a pre-trial procedure was the significant omission by Mr. Dalrymple's trial counsel that constitutes the ineffective assistance of counsel that prejudiced Mr.Dalrymple's case.If in fact his conviction was based upon testimony concerning acts that never occurred, but instead was the result of testimony based upon false mamories that had been hypnoticaly implanted.

THe use of the Iwakiri pre-trial procedure avoids two problems that prominently prejudiced Mr. Dalrymple's defense in this case. First, and perhaps most significantly,use of the pre-trial procedure places the decision concerning the determination of the competency of witness testimony that is to be presented at trial in the hands of the court. Second,use of the pre trial procedure avoids the professional and ethical concerns that arose during this trial in respect to the presentation of previously unvetted testimony to a jury,which led the district court to determine that it had to excuss Mr.Dalrymple's trial counsel and coerce

Mr. Dalrymple into proceeding pro-se in order to present his chosen defense concerning hypnoticaly influenced testimony to the jury.

Mr.Dalrymple, by his own addmission,only completed his formal education through the Ninth grade.His knowledge of hypnosis was largely self taught. And his stated purpose in hypnotically implanting the false memories in Kelsea appeared to be irrational and self-destructive.See Trial TR. Idaho v. Dalrymple)

Yet the question that is presented on this appeal ,is not whether his proposed defense was"stupid" as it was characterized by his trial counsel, Nor whether in the estimation of Mr.DAngelo his trial counsel, there was no way that he could establish the requesit foundation necessary to establish Mr.Dalrymple's chosen defense.

Instead, the question presented here is whether Mr.Dalrymple-or any defendant for that matter-should be accorded thier fifth, and fotteenth amendment rights to due process, Shoul they have access to a full and fair determination of whether the trial testimony that is presented against them,-and upon which he could be convicted and sentenced to life in prison,-has been previously hypnotically tainted from any source ? Mr.Dalrymple's trial counsel failed to request the pre-trial procedure for making this determination that was outlined in Iwakiri. His failure to do so constituted ineffective assistanse of counsel and prejudiced Mr.Dalrymple's by allowing for his conviction based upon acts that he did not commit if the witnesses' testimony that led to his conviction was based upon hypnotcally implanted false memories.

The 1984 Iwakiri decision was issued contemporaneously with the eruption of the McMartin Pre-School scandl in California. McMartin,and related cases,demonstated how highly susceptible young children are to suggestion,regardless of whether those suggestions are made hypnoticaly or by other means through which a favored answer is indicated. One of the lessons imparted from that ex perience is the importence of judicial process in providing necessary protections against implanted or false testimony both as protection to those who have genuinely suffered from molestation and as a protection to those who are falsely accused. The ultimate question here is not whether Mr.Dalrymple's Proffered hypnotic defense was actually credible or even self-defeating, But whether he was afforded a full and fair opotunity to present that defense

in respect to testimony that was aledged to be hypnotially implanted or tainted. Based upon the record before this court he was not,and therefore this conviction should be reversed.

Mr.Dalrymple's trial counsel rendered ineffective assistance of counsel that created the possibility that Mr.Dalrymple was convicted for acts he didn't commit as a result of his trial counsel's failure to investigate,and failure to request the pre-trial procedure for determining if potential trial testimony had been hypnoticaly tainted and .AS a consequence Mr.Dalrymple's conviction should be reversed.

ISSUE

Mr.Dalrymple was deprived of his right to defend against his accusers, Present evidence in his favor,Or present a complete defense.

Mr. Dalrymple was deprived of his right to confront and cross examine his accusers when the District Court refused to allow him to recallKelsea after his council was discharged and he was representing himself. See trial tran. Pg. 388,389,390,391,

JUdge McGloughlin: You may call your next witness"

Dalrymple;"Kelsea Breton"

Ms.Fisher; Kelsea has been released from her subpoena and is at school. She was released yesterday.

McGloughlin; I'm going to sustain. she was released.

After a brief back and forth with the court Dalrymple state he has other evidence that is not in the courtroom(due to D'Angelo's refusal to investigate) The court sends the jury out then asks Dalrymple "did you have any additional evidence you wished to present ?

I'll let you make an offer of proof,if youlld like, asto what you believe Kelsea would testify to.. not what she would testify to what you intend to prove through her,if you would like.

Dalrymple is unsure he attempts to ask the court a question, eventually Dalrymple says,"What I would hope to prove is that we did the hypnosis.

McGloughlin; anything eles: Dalrymple attempts to answer once again the court cuts him off and advisess him to "Stick to my question"

" What eles would you prove by calling Kelsea to the stand ?

Dalrymple(By simply calling her to the stand,the only thing that I could prove is that we actually did the hypnosis; that we actually did the countdown and that she and I were there and that it did happen.

McGloughlin(All right.And did you have any other evidence...

Dalrymple(from Ln. 4 Pg.391) The other evidence is there was a journal in the garage at the house.There was three tapes, three cassette tapes in the --tapes in the house, and in the computer at the house is an on line library that we pay a subscription for. And in the first two chips of every computer built in 93, it records every place it went and everything it saw.And whats on that computer is from that library is all about the hypnosis.It's just verification that that's what I was studying.

Mcgloughlin; Anything eles ? Besides Kelsea and the computer/

Dalrymple; Shelley needs to understand...

Mcgloughlin; Well I'm not here to councel.I just want to know what other evidence you would bring in? Kelsea,the computer,journals, and you said tapes. Anything else?

Dalrymple: Idon't know of anything else.

McGloughlin: Okay. Well you've testified as to the computer, the journals.

Dalrymple: Unless somebody would go get an expert in hypnosis and we can talk about how this was done and if it was even possible.

McGloughlin: I'm going to find that the evidence has been produced at this trial.THis case is coming to a close. You've talked about the computer. You've talked about the journals. You've talked about the tapes.Kelsea was released as a witness. there was no objection. And so, this case is going to be brought to a close unless the state has rebuttal evidence.

Ms. Fisher; No sir.

McGloughlin; Bring in the jury. We're going to closing arguments after final instructions. Bring in the jury.

This testimony about additional evidence,happens without the jury present. Not only is Dalrymple deprived of his right to question Kelsea about hypnosis. He is also deprived of his right to present evidence that would further exonerate him. Then his testimony about Kelsea's knowledge, and the existance of physical evidence is never heard by the jury.

The Compulsory Process Clause of the 6th amendment, grants a defendant the right to offer the testimony of favorable witnesses and to compel their attendance at trial. To exercise the compulsory process right,a defendant must show that the testimony would be material and favorable to the defendant, and not merly cumulative.

(Done and Done)

Dalrymple's testimony is that Kelsea will be a witness that can verify his statements about hypnosis, Dalrymple's testimony about his journal, cassete tapes, and the computer, was physical evidence that would prove his account and exonerate him of the molestation charges.

However the right is not absolute and may yield to other interests.

Dalrymple questions what other interests(if any) were presented in order to prevent the presentation of his journal, the cassete tapes, the computer,and, Kelsea's testimony.

Dalrymple questions; If such other interests do exist, why was there not a hearing to determine the validity of those interests ?

A violation of the Compulsory Process Clause is also subject to harmless error analysis and will contitute harmless error if it is established beyond a reasonable doubt that the violation did not contribute to the verdict.

The testimony and evidence Dalrymple was denied would have quite possibly changed the verdict to not guilty. Therefore had it not been for the violation of Compulsory Process by Judge McGloughlin the verdict would have been different. The absence of Exculpatory evidence that was readily available is testiment to both D'Angelo's unwillingness,or inability to assist his client, and McGloughlin's indiferance to a defendants right.

In enacting prcedural rules, a state may not arbitrarily limit a defendants ability to secure the testimony of witnesses favorable to them, or arbitrarily limit the evidence a defendant may present.

Dalrymple does not recieve any reason why he is not allowed to present evidence in his favor, only that Kelsea is not available at that time. Likewise there is no explination as to why the jury can't hear the testimony that was just presented to the court by Dalrymple about the existence of evidence that could have made a impact on thier decision. Dalrymple contends; The absence of a hearing to determlne the admissability of testimony by Kelsea, and the presentation of physicall evidence, makes the decision by McGloughlin, to end proceedings without the jury having full knowledge of the existence of exonerating evidence, Arbitrary.

see Holmes v. S.C., 547 U.S. 319, 324 (2006) afferming criminal defendants right to 'meaningfull opportunity to present a complete defense" (quoting Crane v. Ky. 476 U.S. 683,690 (1986) see also Chambers,410 U.S. at 302 Defendants right to fair

opportunity to present defense, whether rooted in the 14th amendments Due Process Clause or 6th Amendments Confrontation or Compulsory Process Clause, violated by trial courts exclusion of competent, reliable evidence bearing on credibility of confession becouse that evidence was central to defendants claim of innocence.

The evidence and testimony Dalrymple attempted to present at trial was not irrelevant, and therefore not harmless error by the court. The evidece and testimony was the"whole defense" against the allegation of molestation. The jury should therefor been allowed to hear it.

U.S. v.Arbolez,450,F3d 1283, 1295(11th Cir.2006) (refusal to allow defendant to present evidence or argument at forfeiture stage of trial not harmless because not beyond reasonable doubt evidence would have persuaded jury)

U.S.v.Safavian,528,F.3d 957,967(D.C. Cir.2008)(erroneous exclusion of expert witness testimony not harmless error because testimony context crucial to jury's determination)

U.S.v.Simpson,992F2d 1224,1230(D.C.Cir.1993)(compulsory process violated when court refused to aid defendant in securing witness who allegedly would have provided exculpatory testimony)

U.S.v.Turning Bear,357 F.3d 730,735(8th.Cir.2004)(compulsory process violated when court refused to admit testimony of character witness becouse credibility central issue of case and court failed to cite any interest that outweighed probative value of testimony)

Dalrymple's conviction should be overturned,the sentence vacated, and remanded.

ISSUE.
Involuntary and
Untimley Waiver to Proceed Pro Se

In Faretta v.California,theSuprem Court held that an acussed has a sixth amendment right to conduct his or her own defense in a criminal case.The accused must have the ability to conduct the organization and content of his defense. Thr defendants request to proceed pro se should be timely.And a defendant must knowingly & intelligently waive the right to counsel.Further the request needs to be voluntary.

In the case of Dalrymple v.State of Idaho,I'll begin by stating Dalrymple never makes a request to proceed pro se. In reviewing the trial transcript,or the previous hearings transcript there is nothing to indicate Dalrymple ever made such a request.In fact every time the subject is broached it is Judge McGloughlin who makes the suggestion. (see trial transcript pg.354,355)&(pretraial April 7th 2004) This fact brings into question the voluntariness of Dalrymple's decision to fire his attorney.At trial Dalrymple wants the court to understand that his attorney,(Mr.Dangelo)has not brought forth important evidence.Mr. Dangelo cnfirms and further informes the court he also hasen't investigated Mr.Dalrymple's defense becouse he doesn't understand. Judge McGloughlin's reply to this is to deliver to Dalrymple an ultimatem,(tr. tran.pg.348, to 355)Mr.Dalrymple,obviously,there are new issues that have come uphere before the court.let me lay out for you how i'm inclined to proceed.If you wish to reopen this case and put on testimony that you've said you wish to present,thats fine,You can do that You will be representing yourself..... Dalrymple clearly does not make a request to be pro se,Judge McGloughlin tells him he will be. It's obvious Dalrymple would not have chosen a pro se defense had he not been backed into a corner by the court.Also Judge McGloughlin should have known that a choice between poor representation by unprepaired counsel & self representation,makes a waiver Involutary. see(Patterson,487 U.S. 292n.4)(waiver must be voluntary)

If the defendent must choose between the right to self representationand poor council,the choice of the former may be considered involuntary.

See,e.g.,Pazden v.Maurer424 F.3d303,316,318(3d Cir.2005) (involintary waiver when defendant given choice between unprepaired council and self representation)
James v.Brigano,470 F.3d 634,644(6th Cir.2006)(involutary waiver when defendant given choice between poor council and self represe-ntation);Plumlee v.DelPapa,465 F.3d910,920-22(9th Cir.2006)same; U.S. v.Silkwood,893F.2d245,248-49(10th Cir.1989)(involuntary waiver when trial court impermissibly forced defendant to choose between self-representation and poor counsel.

Dalrymple was not asking to be prp se he was stating his frustratin about DAngelo's performance. Self representation was the courts solution to DAngelo's inept performance. The ultimatum delivered by the court in this case was untimely at the very least and only served to prejudice an already precarious defense.

During the trial is not a good time to change council, I shuldn't need to say more than that.The reason for such a choice by Judge McGloughlin is unclear but a fair trial and presentation of all the evidence was not a factor.

What Mr.McGloughlin sucseeded in doing was make an already unprepaired defense apear even more unprepaired.

The choice to procede pro se was untimely and prejudical towords the defense. Trial court must balance prejuidce to defendant that would result if motion to proceed pro se denied with disruption to proceedings that woul result if motion granted.

See,e,g.,U.S.Matsushita,794,F.2d46,51(2d Cir.1986) U.S.v.Majors,328 F.3d791,794(5th Cir.2003)(defendants request to proceed pro se properly denied as untimely becouse made on second day of trial);U.S.v.Edelman,458 F.3d 791,808-09(8th Cir.20o6) (defendants request to proceed pro se properly denied as untimely because made 5 days before trial and after several continuances) U.S.v.McKenna,327 F3d830,844(9th Cir.2003)(defendants request to proceed pro se denied as untimelybecause motion brought in opening brief but not rease4rted until after case went to jury) U.S.v.Smith,413 F.3d1253,1281(10th Cir.2005)(defendants request to proceed pro se properly denied as untimely because request made 6 days before trial);U.S.v.young,287 F3d 1352,1354(11th Cir2002) (defendants request to proceed pro se properly denied as untimely because made after jury impaneled)

Dalrymple's decision to be pro se was forced on him by the court and is therefore involuntary. The ultimatum presented by the court is untimely and violates Dalrymple's 6th Amendment RIGHT TO COUNSEL. The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions.

Dalrymple lacked the ability to conduct the organization and content of his defense.

Dalrymple's attorny Mr. DAngelo,had not made a investigation into Dalrymple's hypnosis defense. Mr.DAngelo refused to interview the prosecution witness,never contacted an expert in hypnosis to interview his client,never requested a pre-trial proceedure to determin the existence of hypnotic suggestion and it's effect on Kelsea's testimony.Mr.DAngelo claimed to the court that he could not establish a foundation for a hypnosis defense when in fact he hadn't taken the nessisary steps to do so.He further crippled Dalrymple's defese by refuesing to interview Kelsea about hypnosis during cross examination and then releasing her from her subpoena against the wishes of his client.

When Dalrymple attempted to conduct a defense there was no content to organize, Mr.McGloughlin, while he was eager to put forth the ultimatem that coerced Dalrymple to represent himself,never suggested a recess in order to prepair. Mr.DAngelo who was now stand by counsil, never suggested a recess,and Dalrymple didn't know enough to request time to prepair.see tr. tran.349,thru 356)

Mr.Dalrymple's supposed waiver was not voluntary, it was untimley,and it lacked orginization and content.

I could attempt to debate whether Dalrymple's waiver was knowing and intelligent, however that question has been raised and answered by eaqually ineffitiant council. It should be pointed out however that to change council during a trial is never wise. So safe to say the choice was not intelligent.

see Plumlee v. DelPapa,465 F.3d 910,920-22(9th Cir. 2006)

Plumlee asserted that his lawyer had betrayed him where members of the public defenders office were leaking information about his case to another suspect and to the District Attorney. The lack of trust on both sides were so severe that Plumlee's attorney not only corroborated Plumlee's claim that the relationship had broken down,but even made his own motion to be relieved. The District

Court denied the motion. Plumlee then chose self-representation because of the irreconcilable conflict with his attorney. An erroneous denial of a motion to substitute counsel that prompts a defendant to choose self-representations warrants reversal despite the defendant's "choice" to represent himself.

Like Plumlee, Dalrymple had also asserted his counsel was leaking information to the Prosecutors office.and that the lack of trust and communication had never really existed. Dalrymple had likewise made motions to the court asking that D'Angelo be replaced. Once on 02/ 19/2004 and again on 04/07/2004, In fact communicatin was so poor at the 02/19/04 hearing that Dalrymple and D'Angelo were sent out of the courtroom to"settle thier differenses" as a result of an argument they were having at the defense table.

AT the april 7th hearing Dalrymple has filed a motion once again to disqualify D'Angelo as his counsel and asking for the court's assistance to depose State Witness Shelley Breton. McGloughlin informes Dalrymple of his Faretta warnings and gives him the choice of D'Angelo as counsel or none at all. Dalrymple states "I need an attorney". Mcgloughlin then questions D'Angelo about deposing Shelley and D'Angelo says " that wont be Nessasary'".

While D'Angelo doesn't make any motion to be relieved,he does reveal to the Court during Trial that he doesn't understand Dalrymple's defense, and it " makes no sence to him", and that he hasen't spoken with Shelley Or Kelsea about hypnosis, or made contact with any proffesionals in the field of hypnosis. see TRial TRan. pg.349 thru 352. Like PLumlee, D'Angelo corroborates Dalrymple's claims about his performance, D'Angelo will ultimatly claim a "conflict" existed that prevented him from properly representing Dalrymple.

McGloughlin errored when he denied the motion for substitute counsel,and he again errored at trial when he forced Dalrymple to choose between D'Angelo's representation or proceeding Pro-se. D'Angelo's representation amounted to no representation at all thereby rendering DALRYMPLE"S "choice" Involuntary.
An involuntary waiver requiers reversal and Dalrymple's conviction should be overturned, The sentences vacated, and the case remanded in full back to the Disrict Court.

ISSUE.
Ineffective Assistance of Council

Due To

Conflict of Interest.

Barron's Law Dictionary defines Conflict of Interest as, A situation in which regard for one duty leads to disregard for another. 463,F.2d 600,602, or might reasonably be expected to do so.

IN all cases,once an actual conflict exists,the attorney must withdraw and new counsel must be engaged to represent each party.

To obtain a reversal of a conviction,the defendant must prove that(1) counsel's performance"fell below an objective standard of reasonableness" and(2)counsel's deficient performance prejudiced the defendant,resulting in an unrelieable or fundamentally unfair outcome in the proceeding. A defendants failure to satisfy one prong of the test negates a courts need to consider the other. However, In interpreting the prejudice prong, the Supreme Court has identified a narrow category of cases in which prejudice is presumed: when there has been an"actual or constructive denial of the assistance of counsel altogether," "various kinds of State interference with counsels performance" or when counsel is burdened by an actual conflict of interest.

Dalrymple's conviction should be reversed and the case remanded. The first time MR.DeAngelo's "conflict" is brought to light is by the trial judge,Mr. McGloughlin,see(trial tr. pg.395 Ln.2) Mr.DeAngelo had adequetly shown to the court that there was a conflict on this issue and that pursuent to the canons of ethics, for him to go forward with such evidence,you could concevably be violating those canons.And so, that was the baises of the court allowing Mr.Dalrymple to proceed to represent himself.

This declaration was stated after the jury had gone to deliberate. The exact nature of Mr.DeAngelo's "conflict" is never disclosed. We don't have the benifit of knowing why Mr.DeAngelo thought he might violate his ethics. Or how he could possibly have reached such an impasse without a proper investigation. Dalrymple questions how the court could consider DeAngelo's performance "adequet" knowing he hadn't spoken to any wittness or secured any expert testimoney, and he failed to ask for any kind of pre trial procedure to determine the existence of hypnosis. (see trial tr. pg 350)

Dalrymple questions why Mr.DeAngelo didn't withdraw, and allow new counsel to be appointed? Mr.DeAngelo knew of Dalrymple's desire to present hypnosis as a baises for his defense long before the trial or the april 7th hearing. Mr.DeAngelo could have and should have withdrawn as Dalrymple's council.

Whatever DeAngelo's reason for stating a conflict, he should not have been allowed to prejudice Dalrymple's defense . Dalrymple asserts DeAngelo's performance and his conflict of interest justifies presumed prejudice and conviction should be reversed and the case remanded.

STANDARDS for CONFLICT of INTEREST CLAIMS.

Mickens v. Taylor, 535 U.S. 162,171, 152 L.Ed.2d 291 (2002) (an "actual conflict" is a " conflict that affected counsel's performance--as opposed to a mere theoretical division of loyalties.

Amiel v. U.S. 209 F.3d 195, 199 (2nd CIr. 2000) (" To show a lapse in representation, a defendant need not demonstrate prejudice--that the outcome of the proceeding would have been different but for the conflict--but only that some plausible alternative defense strategy or tactic might have been pursued but was not and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interest's").

In Dalrymple's case there is a factual showing of inconsistent interests and demonstrates that D'Angelo made a choice between possible alternative courses of action, and he failed to elicit evidence helpfull to his client. It's not clear how McGloughlin can justify appointing D'Angelo standby counsel after he has declared a conflict, and after the interview about his failings in gathering evidence. At this point McGloughlin Knows D'Angelo is unwilling to assist Dalrymple in presenting his defense so unless the court's intent is to further cripple Dalrymple's defense, why leave him as counsel in any capacity at all?

U.S.v.Moore, F.3d 1154 (9th Cir. 1998) (conflict where client made repeated representations to the court regarding his inability to communicate with attorney).

CONSTRUCTIVE DENIAL of COUNSEL.

Dalrymple's defense councel's performance was not only inefective,but D'Angelo abandoned the required duty of loyalty to his client; D'Angelo did not simply make poor strategic or tactical choices; he acted with reckless dissregard for his client's best interest and, apparently, with the intention to weaken his client's case.

Bell v. Cone, 535 U.S. 685,152 L.Ed.2d 914,122 S.Ct.1843, 1850 (2002)

CRONIC applies when counsel entirly fails to subject the prosecution's case to a meaningful adversarial testing process. The Bell Court clarified that an attorney's failure must be complete, noting the difference between the situations addressed by Strickland and Cronic is " not of degree but of kind " Bell 122 S.Ct. at 1581. The court identified three situations implicating the right to counsel, where the Court would presume petitioner has been prjudiced. First: where petitioner is denied counsel at a critical stage of the criminal proceeding. Second; where petitioner is represented by counsel at trial, but counsel " entirely fails to subject the prosecution's case to a meaningfull adversarial testing" Third; prejudice is presumed when the circumstances surrounding a trial prevent petitioers attorney from rendering effective assistance of counsel.

In the case of State of Idaho v. David Dalrymple, see trial tr. Pg. 354 Ln. 20. In satisffying the first situation in Cronic the Court (Judge McGloughlin) states; Mr. Dalrymple , obviously, there are new issues that have come up here before the court. Let me lay out for you how I'm inclined to prceed. If you wish to reopen this case and to put on the testimony that you've said you wish to present, tha's fine, You can do that. You will be representig yourself because if tou contiue to have Mr. D'Angelo represent you this case is closed.

If you choose to fire him as your counsel and you want to proceed on your own--and that means also not only do you take the witness stand and testify, you are subject to recross-examination, and as far as any closing arguments are concerned, you will be makeing those to the jury.

The ability to gather, orginize, and present evidence, is the responsibility of the defense counsel.

Dalrymple knows, and the Court has been made aware that D'Angelo has not conducted an investigation) see trial tr. Pg.349, 350. Dalrymple also refusses to abandon his only defense to the allegation of molestation against him. Dalrymple tells the court; This needs told, Your Honor. I think I'll represent myself.

This qualifies as a CRITICAL STAGE of the PROCEEDINGS, In fact a reasonable person(whether qualified in law or not) would probably consider the entire trial, from start to completion, a CRITICAL STAGE, and the decision, that somehow an untrained defendant is suddenly qualified midtrial to represent himself is unreasonable.

AS to the SECOND SITUATION presented in Cronic, D'Angelo entirely fails to subject the prosecution's case to meaningfull adversarial testing, During cross examination, see trial tr. Pgs. 131, thru. 150. D'Angelo fails to ask Kelsea anything about hypnosis. D'Angelo failed to gather evidence and present that evidence at trial, see trial tran. Pg. 349,thru 353. regarding hypnosis, failed to request a pre-trial proceedure that would have possibly identified hypnotic suggestion, failed to gather physical evidence, journal, cassettes, and computer. D'Angelo failed to petition the court requesting an interview with the prosecution's witnesses,( )A witness has rights and can deniy an interview by a defendant or defendant's councel providing those rights are not in conflict with a defendant's 14th amendment rights.) D'Angelo doesn't ask for a hearing to determine rights and at a april 7th pre-trial hearing, tells the court " he sees no need to speak with them" When the court is made aware of D'Angelo's negligence and questions him, D'Angelo claims he doesn't understand Dalrymple's defense, and then somehow claims he has a conflict.(The record does not indicate when D'Angelo makes the conflict claim) The first mention of conflict is by Judge McGloughlin see trial tr. Pg. 395, Ln. 2 thru 6 ;
D'Angelo's performance,or, lack of performance ,should be enough to convince this court of the possibility Dalrymple didn't commit the offenses for which he is incarcerated.

Mickens v. Taylor, 535 U.S. 162, 166, 152 L.Ed.2d 291(2002) (prejudice presumed where counsel was " denied entirely or during a critical state of the proceeding")

Daniels v. Woodford,428 F.3d 1181 (9th Cir. 2005)

INCOMPETENT to STAND TRIAL.

Dalrymple may not have been competant to stand trial due to Emotional Problems.

D'Angelo failed to investigate Dalrymple's Mental,or emotional condition, Where it was apparent from conversations with Dalrymple that his inability to communicate properly, and constant crying were symptoms of some type of dissorder.

Williams v. Calderon, 48 F.Supp. 2d 979(C.D. Cal. 1998)

Evidentiary hearing was warrented where an issue of fact existed whether the defendant was competent to stand trial and whether counsel was ineffective in failing to present mitigating evidence.

Correll v Stewart, 137F.3d 1404, (9th Cir. 1998)

Trial counsels failure to present any evidence of petitioners mental illness which may have constitute mitigating circumstances requiered an evidentiary hearing to resolve ineffectivness of counsel claim.

U.S. v. Burrows, 872 F.2d 915 (9th Cir. 1989)

Trial counsels failure to investigate defendants mental state and present evidence, at trial based on defendants mental state constituted a significant claim of ineffective assistance of counsel and requiered the district court to conduct an evidentiary hearing.

McLuckie v. Abbott, 337 F.3d 1193, 1199 (10th Cir. 2003)
(" a failure to timely investigate a cliemts mental state,let alone a failure to assert a mental state defense at trial,falls well below an objective standard of reasonableness"where a defendant exibits " severe mental problems")

Evans v. Lewis, 855F.2d 631,636-39 (9th Cir. 1988)
(counsel's failure to pursue the possibility of establishing the defendant's mental instability constituted ineffective assistance.)

Deutscher v. Whitley, 884 F.2d 1152, 1159-60(9th Cir.1989)
(" counsel made no tactical decision not to investigate[the defendant's] possible mental impairment; he simply failed to do so")

COUNSEL'S CUMULATIVE ERRORS

Cumulative errors, while some are individually harmless, when considered together, can prejudice a defendant as much as a single reversible error and violate a defendant's right to due process of law. The cumulative affect of D'Angelo's errors to wit; Failed to investigate,(2) Failed to order pre-trial procedure for the determination of hypnosis.(3) Failed to properly dissqualify witness with prior statements.(4) Failed to object to prosocuter's coaching of witness.(5) Failed to cross examine witness about hypnosis.(6) (6) Failed to contact an expert in hypnosis to interview his client. (7) Failed to contact a mental health profesional when it was apparent his client was emotionaly unstable to the point it affected his ability to communicate.(8) As standby counsel he failed to request a mistrial.(9) Failed to request time for his client to prepair.(10) Failed to gather evidence favorable to his clients defense.(11) Failed to withdraw when he had a conflict.(12) And Failed to understand his client's case.
All constituted ineffective assistance of counsel.

U.S.v. Troy, F.3d 207 (9th Cir. 1995)
The Ninth Circuit found the cumulative effect of the errors deprived the defendant of a fair trial. This case was not a ineffective assistance of counsel claim; rather, the trial court's action hindered the defendant's case.

Wade v. Calderon,29 F.3d 1312 (9th CIR, 1994)
Defense counsel's cumulative errors and omissions during penalty phase constituted ineffective assistance of counsel.

Thomas v. Calderon, 120 F.3d 1045 (9th Cir.1995)
Counsel's cumulative errors in failing to investigate and impeach the jailhouse informants and to rebut the forensic evidence of rape cast grave doubt on hi reliability of the entire proceedings thus, constituting ineffective assistance of counsel.SEE ALSO-
U.S. v.Kladouris, 739 F.Supp. 1221(N.D. Ill. 1990); Halton v.Hesson, 803 F.Supp. 1272(M.D.Tenn1992);U.s.v.Hammonds, 425 F.2d 597(D.C.CIR.1970) Hollines v. Estelle, 569 F.Supp.146(W.D.Tex.1983);Jemison v. Foltz, 672 F.Supp.1002(E.D.Mich.1987); Henry v. Scully, 78 F.3d 51(2nd Cir.1996) Harris by and through Ramseyer v. Wood, 64 F.3d1432 (9th Cir.1995) Harris v. Housewright,697 F.2d 202(8th Cir.1982); Harris v. Towers, 405 F.Supp. 497(D.Del.1974);Nealy v.Cabana,764 F.2d 1173(5th Cir.1985)

D'Angelo's failure to lay proper foundation for the admission

of hypnosis evidence, along with his unwillinigness to develope any semblance of a defense theory constitutes Ineffective assistance of Counsel.and deprived Dalrymple of a fair trial.

The allegations presented here are easily provable with a review of the record,TRial tran. Pg.349 thru 353, D'Angelo addmitts to the allegations about failing to investigate and failing to develop foundation. and Trial TRan. Pg. 131 thru 156; During the cross examination of Kelsea he fails to ask about hypnosis, and at the conclusion of his interview he releases her from her subpoena against his client's wishes. He not only fails to ask Kelsea about hypnosis, he manages to fix it so nobody can interview her about hypnosis.

D'Angelo's performance was so poor ,[whether intentional or if he really is that poor an attorney] that he did a better job for the prosecution's case than his client's. D'Angelo's Cumulative Errors lay doubt on the conviction, and expose the possibility Dalrymple was convicted for acts he did not commit.

Mr.Dalrymple's conviction shold be overturned.

ABUSE of DISCCRETION.

Dalrymple alledges the court (Judge McGloughlin) did abuse his discretion in COERCING Dalrymple to proceed Pr0-Se after Dalrymple's counsel (D'Angelo) had claimed a conflict.

The record does not indicate exactly when D'Angelo claims he has a conflict. The first time conflict is mentioned is by Judge McGloughlin, see TRial TR. PG. 394 thru 395.; "Now the court today released counsel based upon this evidence that Mr. Dalrymple submitted to the jury regarding hypnotism of the child. The baises for the court's decision in that regard is that Mr. D'Angelo had adequatley shown to the court that there was a conflict on this issue and that pursuant to the canons of ethics, for him to go forward with such evidence, you could conceivably be violating those canons. And so, that was the basis of the court allowing Mr.Dalrymple to proceed to represent himself with the assistance of counsel,(D'Angelo couldn't properly prepare for trial yet somehow he is qualified to be standby counsel) Mr. D'Angelo, present , and he has been throught the course of the trial.

(Dalrymple had asked the court to replace D'Angelo on at least two seperate hearings prior to trial becouse he feared D'Angelo would do exactly what he did. Judge McGloughlin had refused. Now during trial he makes Dalrymple disscharge his attorney if he wants to present evidence in his defense.)

ON page 354 of trial trans. Ln. 16; the court takes a recess This is after Dalrymple has told the court about hypnosis and that D'Angelo was supposed to have assisted him in it's presentation. The court has questioned D'Angelo about " was he advised of this hypnotism in advance of trial" and " did he inquire of the witnesses in this case, Kelsea or her mother, as to whether or not this had ever occurred".

Dalrymple concludes that since D'Angelo makes no declaration about conflict before this recess, and since McGloughlin makes him choose between representation and evidence directly after the recess, D'Angelo must have made this revelation known to the court during the recess.

Judge McGloughlin makes a poor choice in contiuing the trial. Whether intentionaly, or, by accident, he forces a choice on the defenant which would not have happened had he listened during pre-trial hearings; see pre-trial April 7th.

Dalrymple should have been appointed different counsel. Instead McGloughlin creates a further conflict by allowing D'Angelo to contradict Dalrymple and undermine his veracity, which left Dalrymple without counsel. McGloughlin abused his discretion in failing to apoint new counsell, Failing to declare a Misstrial, or at the very least, Failing to conduct an evidentiary hearing.

In allowing D'Angelo to remain as standby counsel McGloughlin creats a charade so later he can claim Dalrymple was never denied counsel at a critical stage, when in fact he was. And again whether by intent or accident, McGloughlin has created,and presents, to the jury, a picture of instability in the defense. Further prejudicing Dalrymple's defense.

Dalrymple was deprived of DUE PROCESS by the court and

Dalrymple shouldhave been appointed different counsel. McGloughlin abused his discretion in insissting Dalrymple continue whenhe knew D'Angelo had not prepaired for trial, hadn't gathered any evidence, so nothing would be available to present except Dalrymple's claim without any phisical evidence to substatiate his claims. Judge McGloughlin's actions are sufficiant to justify a finding of PRESUMED PREJUDICE and this conviction should be overturned the sentence vacated, and this case remanded in it's entierty .

INEFFECTIVE ASSISTANCE OF COUNSEL ON POST CONVICTION.

Dalrymple was represented by Cristopher Scwartz at the July 20 and August 11,2009 Post Conviction hearing that resulted in a confermation of Dalrymple's previous convictions.

Mr. Scwartz failed to bring all the issues to the courts attention and failrd to bring evidence to support the issue he did bring. see post con. tr. pg.197 thru 214. Judge McGloughlin's assesment of the case.

Throughout McGloughlin's conclusory remarks he contiually makes mention of Schwartz'es failure to present any evidence to substatiate Dalrymple's case,And as a Direct Result McGloughlin Denies the Petition for Post-Conviction.

At the time of Dalrymple's Post-Conviction hearing the case of Martinez v.Ryan had not yet been decided. This is significant becouse at the time a Defendant was precluded from Declareing Ineffective Assistance of Counsel claims against thier Post-Conviction counsel. This situation has ghanged.

Schwartz and McGloughlin's actions and statements seem to reflect an attitude of indifference to the testimony presented as McGloughlin happily points out Schwartz'es inefficiencies in order to clear himself and D Angelo of any wrongdoing and justify denial of Dalrymple's Post-Conviction.

At the time McGloughlin, Schwartz, D Angelo and even the Prosecutor Ms.Fisher are confident there can be no recourse.

This allows them to say and do whatever they want as long as Dalrymple remains convicted.

GUILTY AT ANY COST.

KANGAROO COURT.

Barrons Law Dictionary defines Kangaroo Court as a court that has no legal authority, and that disregards all the rights normally afforded to persons; it's conclusions are not legaly binding.

This is a colloquial term refering to a court that is biased against a party and thus renders an unfair verdict,or judgment.

The trial court,(Judge McGloughlin specificaly) did engage in conduct and desisions which undermined the principles of justice and undermined Dalrymple's ability to have a fair Hearing either Trial,or on Post Conviction.

Dalrymple's counsel at both hearings failed to bring and present evidence in support of Dalrymple's defense,(but it wouldn't have mattered) Cristopher Schwartz (counsel at Post- Conviction) failed to present issues available to him in the trial and pre- trial record. D'Angelo's performance at trial was clearly defitiant. Yet McGloughlin somehow manages to claim Dalrymple was "adequetly" represented.

Judge McGloughlin's performance at the conclusion of Post-Conviction proceedings should stand as a beacon for any Jurist wishing to Ignore DUE PROCESS and Embrace the GUILTY AT ANY COST philosophy. see Post Conviction tran. pg.197 thru 214.

McGloughlin begins by quoting the standard for Strickland he even spells S-T-R-C-K-L-A-N-D for those of us who happen to be illiterate.(condesending) He explains the standard but(coincidentaly) leaves out the exception- That the Supreme Court has identified a narrow catagory of cases in which Prejudice is Presumed. When there has been an Actual or Constructive Denial of the assistance of Counsel altogether. When counsel is burdened by an Actual Conflict Of Interest,or when there are Various kinds of State Interferance. In these situations Prejudice is so likly to occure that a case by case inquery is unnecesary.(McGloughlin doesnt want to make the remotest suggestion that Dalrymple may be correct so he'll just pick the parts that give his agenda the edge.

I'm going to paraphrase and condence Judge McGloughlin's speach selecting segments that hopefully retain for the reader,the essance of his attitude towards the defendant and the defendant's rights.

On pg.197 ln. 20 Mcgloughlin continues "ther's also the presumption that counsel's performance is within a WIDE RANGE of Proffesional Assistance,That it is SOUND TRIAL STRATIGY and he quotes Davis V.State. /SEE POST CONVICTION PG. 144 LN. 16 THRU PG 146 SE ALSO TRIAL TRANS- PG. 348 THRU 355

(D'angelo has testified that he failed to understand Dalrymple's defense and failed to gather evidence, Failed to cross examine witnesses about hypnosis,Failed to assist his client in presenting hi defence, and claimed a CONFLICT existed that hindered his performance at trial) The range of PROFFESIONAL ASSISTANCE must be really wide for McGloughlin's way of interpretation. Any reasonable person would have thought that with D'Angelo's addmission of all those facts the concesus would have gone from effective assistance to ineffective assistance in record time. But not McGloughlin.

On pg.198 McGloughlin states; "And I can't find from the record that there was aconflict between Mr.D'Angelo and Mr.Dalrymple(your joking right?) as to,whether you want to refer to it as a personality CONFLICT,(now he's going to contradict himself) A conflict that"s so impacted the attorney- client relationship, That it prevented Mr.D'Angelo fromrepresenting Mr. Dalrymple zealously and prudently and proffesionaly in the course of thier relationship.(What record is this guy reading from-D'Angelo's testimony was that Dalrymple's defense was"STUPID"and he [D'Angelo] didn't "UNDERSTAND" and that Dalrymple was "DIFFICULT" to DEAL WITH" therby creating a situation which compelled him to claim "CONFLICT" at Dalrymple's trial.

McGloughlin presided over the February 2004 hearing to disqualify D'Angelo where the argument at the defense table prompted him to send both D'Angelo and Dalrymple out of the courtroom to"settle thier differences". Dalrymple asked the court again for a change of counsel at an April 7th pre-trial hearing; Yet from the record McGloughlin can't find a conflict that impacted attorney/client relationship) (Does McGloughlin know what CONFLICT means)

on pg.198 ln. 20-McGloughlin continues- There was clearly a CONFLICT as to this issue of what evidence would be presented and what evidence wouldn't(Ok LETS THINK- SHOULD A DEFENDANT BE ALLOWED TO PRESENT HIS EXPLANATION OF EVENTS OR, SHOULD HIS ATTORNEY MAKE THEM UP FOR HIM ?) But ,Mcgloughlin says, I can't find that that so permeated this attorney/client relationship that Mr.D Angelo did not completly and diligently represent Mr. Dalrymple.

On pages 199 and 200 McGloughlin rambles on about D angelo's review of the prosocution evidence and the presentation of said

and how that was not ineffective.
On pg.200 ln.25 thru pg.201

I'm satisfied from the totality of the evidence Mr.D angelo, over a series of meetings,becouse there was some contention. It Wasn't about accusatory remarks by Mr.D Angelo.A CLSSIC CONFLICT would be,This is an offer you got to take,and it's a waste of time to go to trial.(Once again McGloughlin wants to discuss the CONFFLICT that he can't find from the record. Only now he wants to differentiate between CLASIC CONFLICT and what? regular old run of the mill conflict.Well at least we now know it existes.)

McGloughlin again; pg,201 ln.6

No,this is one where it was permeated with this whole issue of a meeting between a victim,or at least a parent of a victim,and a prosecutor and a defense attorney. And that was first and formost on his mind,and I understand he had a belief that if he... and if that meeting occured there would be this revelation about being hypnotized and that there would be a recanting of earlier testimony, (McGloughlin says this like it's the first time HE's heard it) But I can't find that Mr.D Angelo to have not made a formall motion that that was ineffective assistance of counsel.(There's news) ln.18- Even assuming for the sake of argument that it was,(OK LET'S ASSUME IT WAS INEFFECTIVE) Ther's been certainly no showing here that such a meeting would have changed the outcome of the case.To my knowledge,There's no evidence before this court about any recantation by the victimin the case.(THAT"S EXACTLY THE POINT DALRYMPLE HAS TRIED TO MAKE) And on a related note, There is no testimony before this court of an expert nature as to the issue of hypnosis.(That was one of Dalrymple's claims,that D angelo had failed to bring any expert tetimony. Now McGloughlin points out that Dalrymple's current councel [Schwartz] is also negligent in the same area)

pg.202 ln.2 But I'll find that Mr.D Angelo over a period of time did advise the defendant of his constitutional rights. I know that the courts precluded from probably looking at the court record, but the court also advised the defendant of his constitutional rights,but I'm satisfied that Mr.D Angelo did that and made it clear to Mr Dalrymple that he could testify,and that he could confront his accusers and testify on his own behalf,and that,in fact,did occur. (Dalrymple's testimony after D Angelo claimed conflict and he took the stand was without benifit of counsel to present issues,

and it was hindered by prosecuter and McGloughlin's interference. When Dalrymple tried to recall Kelsea for testimpny about hypnosis he was denied.(Apparently someone should explain defendant"rights" to McGloughlin)

On line 12 McGloughlin;with allegation 6.."failure to interview witnesses,discuss presentation of my defense.Mr.D Angelo never interviewed the witnesses and was unable to perform any investigation into the allegations"

Well I'll note for the record that on reviewthat he certainly called the witnesses that he had been asked to call.The second prong of Strickland is,okay,who were the witnesses that weren't interviewed and what would they have testified that would have changed the outcome of the case. (McGloughlin has heard testimony from D Angelo about how he didn't interview Shelley or Kelsea and wouldn't ask any questions about hypnosis when they testified,D Angelo told that Dalrymple had asked him to file motions and try to set up an interview with Shelley so that testimony could be brought to trial, and he [D Angelo] had refused.D Angelo also testified Dalrymple had wanted him to contact a expert in hypnosis to interview with and substantiate his testimony.Which again D Angelo failed at.McGloughlin has heard sworn testimony from D Angeol and Dalrymple and he himself has just stated "and I understand he had a belief that if this meeting occured there would be this revelation about being hypnotized and that there would be a recanting of earlier testimony,)Yet his [McGloughlin's] next statement is..Ther's been no proper evidence to the court who those specific witnesses were and,what,if any evidence they would have presented that would have potentially changed the outcome in this case. (More Contradiction)

pg.203 ln.4 Mr.D Angelo did have investigators,assigned investigators.I'M NOT SAYING THAT THEY INTERVIEWED EVERY WITNESS, BUT I HAVE YET TO HEAR A SPECIFIC NAME OF A WITNESS THAT WAS ASKED BY MR.DALRYMPLE TO BE INTERVIEWED AND WHAT THAT WITNESS WOULD HAVE SAID THAT WOULD HAVE CHANGED THE OUTCOME OF THE CASE.(The ability to ignore testimony must be a prerequiset to being a judge)

pg.203 ln.11 McGloughlin then goes to talk about the deposition issues..Was it ineffective of Mr.D Angelo to pursue a motion,(to not pursue is what he should have said) Well you look at the rule,The rulr 15 of the criminal rules, You can take a deposition of a witness if they're going to be unavailable to testify at trial or prevented from attending a trial,Or that the

testimony of the witness is Material and that it is necessary to take the deposition of the witness in order to prevent a failure of justice. (That's exactly what Dalrymple was trying to prevent, A Failure of Justice)(McGloughlin throughout his speach inadvertaantly makes the case for ineffective assistance at the first collateral proceeding.But since the Martinez V.Ryan case hasen't been heard yet, he obviously belives he can lay one attorney's misconduct off on the other and continue on ignoreing the facts.)

pg.203 ln.21..Well,okay,ther's been no showing made here by Mr.Dalrymple how a deposition would have changed the outcome of the case,(And the aword for ineffective assistance at a collateral proceeding goes to Mr.Schwartz who advised Dalrymple he wouldn't need to show that)(Honestly I wish attorneys would wear a sign stating thier a sellout)

(McGloughlin is once again avoiding the facts,or twisting them. He's been told by Dalrymple and Dalrymple's counsel how a deposition would have changed the outcome of the case.)ln23..and there's certainly been no showing here that Mr.D Angelo in declining to take that invitation by Mr.Dalrymple,that he was ineffective in his assistance to Mr.Dalrymple in his defense.(Dalrymple never invited D Angelo to anything,He told him he wanted him [D Angelo] to do his job.)(It doesn't matter what evidence is brought or what Dalrymple says,McGloughlin and D Angelo seem to have a you tell the lie and i'll swear to it agreement that can't be overcome through testimony)

pg.204 ln.11..Well first of all,Mr.Dalrymple did get to testify as to what he did.(McGloughlin knows better,he made the rulings that prevented testimony)..Mr.D angelo articulated four resons why he did not pursue this hypnosis testimony.(Now D Angelo's excuses will be accepted like he is an authority on hypnosis) He outlined those,and I think that those were very valid reasons why he was concerned,and it created an ethical dilema for him in that,Even assuming if he'd asked about how he performed the hypnosis, It would have still required testimony from the defendant as to whether or not this person was in a hypnotic state(what?) and I would submit that does require some expertise. ln.22..And,secondly,there was grave inconsisticies between when this hypnosis alledgedly occured, and we come back even earlier to where the victim had talked about earlier,lewd and laciviousconduct(Now McGloughlin's an expert on what's possible through hypnosis.Let's not get an expert and conduct

a proper investigation.)(Everyone in this case is a exprt except the guy who was actually there. And of course we wouldn't want any real proffesional to coroberate his testimony)

pg.205 ln.1..it just was a recipe for disaster in terms,of any kind of defense.

But addressing that issue,I think certainly the defendant has a right to present evidence to a jury,(well thats a relief) and if they choose to do so in violation of the standards of ethics or proffesional standards of attorneys,that the defendants can do that pro-se,but they can't do it with the assistance of,or through the direction of an attorney.(Correct me if I'm wrong,but did McGloughlin just call Dalrymple a LIAR ? If that's the case why doesn't he or either of Dalrymples attorneys,or[the prosecuter for that matter] want an investigation into this hypnosis?)(Everyone's an expert-except the expert..WHO"S NOT PRESENT)

ln.11 And I thought that Mr.Dangelo's explanation as to why he would not be a part of such testimony was clear,and I can't find that that was ineffective assistance of counsel per-se,(Let's see.. D Angelo refused to assist his client in any real manner then claims conflict when he's called on his performance.And trys to lay the blame for poor performance on his client.BUT HE GAVE A GOOD EXCUSE SO THAT'S NOT INEFFECTIVE)(What does McGloughlin consider ineffective) ln.14 to 15..and assuming that it was ,assuming that he should have gone ahead and asked him that,A.he did testify that he had--I can't find whether it came from Mr.Dalrymple examining himselfpro-se or haveing Mr.D Angelo ask him those questions,But that fact in and of itself would have changed the outcome of the verdict in this case.(Sometimes it's hard to follow McGloughlins oration,He talks alot of double-talk with no real meaning)(Whatever it was it would have changed the verdict)ln.22.. And then we talked about Mr.D Angelo's effort to obtain an expert becouse that is a fair area of inquiry. (Here we go again) I think Mr.D Angelo made a good faith effort to try and find an expert.He talked to faculty at Boise State UNiversity here.He had his investigater look into it. But even assuming that his efforts in that regard were defitiant,I think I'd come back to what I alluded to earlier. There is no evidence before this court from a hypnotist that this testimony and the incredible suggestion made to a child that she has been sexually abused,when in fact , she has not been sexually abused,and for this theory or defense imposed by Mr.Dalrymple,there's no showing that such a suggestion

is even possible.Perhaps it is possible,but I'd have to speculate.

(With this statement McGloughlin hits two attorneys with one stone.Niether D Angelo or Schwartz have presented any expert testimony.They both claim they can't locate an expert,yet D Angelo quotes the Iwakiri case which had two experts from boise,and supposedly spoke to faculty at Boise State who was knowledgeable in hypnosis.Yet no one interviews his client or testifies in court. Schwartz and Dalrymple have had conversations about this very subject,and Dalrymple has supplied Schwartz with the names of books on hypnosis.During cross examination he asks D Angelo about books, Yet for some reason Swartz is under the impression that it is unnesasary to present that evidence in lue of expert testimony.) (Ineffective Assistance by both D Angelo and Schwartz)

pg.206 ln.14.. The burden is upon the petitioner to show that, a,this hypnosis occured,perhaps through having a hypnotist interview the victim,(Well look who just showed up to the party.) (Where was that reasoning during trial,when he was making Dalrymple discharge his attorney and proceed prp-se)?..or review thier testimony.Iwould simply have to speculate as to whether or not an expert in hypnosis could have come in and said,Well this is all not only possible,I just have nothing.(Now after the statements McGloughlin just made,that point directly to glaring deficiencies in both D Angelo's and Schwartz's presentations of Dalrymple's case,he still manages to condone both attorney's actions and excuses.)

pg.206 ln.22..And,again,I know that both Mr.D Angelo and, frankly,Mr.Schwartz,you've tried today to do your best to find somebody that could come in and kind of focus these issues and structure them in a way where the court could look at this and say okay,well,an expert has said he has an opinion that perhaps this childs testimony had the kind of syntax and rythm to it that indicates that she may have been hypnotized; That this kind of hypnotic suggestion is possible,and could,infact,have taken place.It's all speculation. And again,I can't find that even though he may have --Mr.D Angelo may have perhaps taken additional steps to try and connect with an expert in hypnosis,that even that was deficiant on his part.(First McGloughlin congragulates them for doing there "best",Then he explains the evidence that's missing,Then he states D Angelo could have done a better job locating an expert.Then somehow he finds that's not defitiant.)He even goes on and says.. pg.207 ln.13..there's been no showing here that the outcome of the

case would have changed in any way.(With this statement he manages to again point out Schwartz's ineffective assistance) pg.207 ln.15.. I hope I've addressed the issue of investigator's claim of hypnosis.I think again Mr.Dangelo was constrained as far as,to a certain extent,not only finding an expert on the subject but what sort of contact,if any,would have been allowed with the victim in this case in light of the no-contact order and the victim rights.(D Angelo quoted Iwakiri which had two experts from Boise in hypnosis,,On page 161 line 10 of post conviction tran. D Angelo testified he spoke to a "Dr.Beaver""becouse we used him extensivly" So,we can probably deduce D Angelo's testimony about not being able to find an expert,is not true. And as far as contact with the victim --Well acording to his own testimony..He Never Tried!)

(McGloughlin has Double-Talked and contradicted himself in an attempt to make D Angelo and Schwartz sound like hard working and honest attorneys who had done a competent job for Dalrymple,When in fact,That's just not true.)[On page 93 ln.12 post con.] D Angelo states he was chief counsel for the Idaho Dept.of Health and Welfare for about 11 years.That entailed representing seven divisions. The Division of Welfare, The Division of Family and Childrens Services, The Division of Enviromental Quality, The Division of Mental health that ran The institutions at State Hospital South and North,And the Idaho State School and Hospital, and the Division of Public Health...Now, Considering this vast resevour of mental health profesionals..How could he not find somebody knowledgable in HYpnosis whom his client could interview with?..If as he says--He Tried.

Back on record Pg.207 ln.22 to Pg.208.LN.23 is more Doubletalk then on line 24..Mr.D Angelo tried to work around this whole issue of this meeting between Mr.Dalrymple and the victim and the mother. That was a real IMPEDIMENT(When did gathering possible evidence to verify what your client was telling you become a IMPEDIMENT?) Pg.209 Ln.1..That was a real IMPEDIMENT that was brought about by Mr.Dalrymple's actions.Certainly not..and it did IMPEDE Mr.D Angelo's ability to manage this case and handle it in a normal amount of time and effort and energy,and he took extra time,energy and effort (OKAY the guy's a saint.We get it) to make additional contacts with Mr.Dalrymple to try to work through this constant discusion about this meeting process...(After McGloughlin nominates D Angelo for sainthood he then)(ln.14..) Mr.D Angelo's handling of the preparation

of his client for trial was competent.It was profesional.It was not defitient.He certainly went over these areas that he was going to cover with Mr.Dalrymple.It wasn't as though he got on the witness stand cold.He adequetly prepared him for trial and for the issue of testifying before the jury...(Except for that one little IMPEDIMENT called evidence)

Ln.22.. Again asking the witnesses questions about hypnosis, I can't find --I mean,the testimony that was presented was that he had hypnotized this child outside the presence of anyone eles,and ther's certainly no evidence here that by asking the victim witness to testify whether or not she'd been hypnotized,again,I don't profess to be extremly knowledgeable about hypnosis,(Finaly, A statement we can all agree on.And if your not knowledgable about hypnosis, (Then stop making determinations about it,Or what Dalrymple is trying to tell you..CONTACT A PROFESSIONAL.)..But that's kind of the whole process.You've been hypnotized and you don't know it.

On pg.210 ln.7..(Mcgloughlin really begins to whitewash the case)..Again,even assuming that he'd asked a question about hypnotic suggestion,There's been no showing here made that that would have somehow changed the outcome of the case,As far as something for the jury to consider.(Again,Ineffective assistance by Schwartz.)

I've touched upon this, allowing Mr.Dalrymple to testify about hypnosis.He ultimatly,again,was allowed to testify about it.I've talked about whether or not that was done through self-examination by Mr.Dalrymple from representinghimself or from Mr.D Angelo,and again,I can'tfind that ,though there was testimony here by Mr. Dalrymple that he thought he looked perhaps idiotic asking himself those questions, I can't find that that was a result of whether or not he was asking the questions or his attorney was asking him the questions...

(RIDICULOUS!! I really don't understand why McGloughlin's makeing statements like this.Wouldn't it be easier to just admit D Angelo didn't do his job and the court errored in coercing Dalrymple who was unprepared and untrained to be pro-se in the middle of the trial.Why continue to lie about how it didn't affect the defense? Honestly I feel dumber for having read McGloughlin's assesments.It's like he's talking to stupid children.Doesn't he realize how much money and time he's caused to be wastedon the incompetent performances of D Angelo and now Schwartz? And every

time he says-"There's been no showing,or,no evidence presented here, or,I can't find from the totality of the record any evidence before the court here today". He makes the case for ineffective assistance, both at trial and at post-conviction.Becouse if either D Angelo or Schwartz had done a proper job of representing thier client the evidence wouldhave been there.)(Although judging from McGloughlin's statements,He would have found a way to ignore that also.)

Pg.210 Ln.24.. He says it was hurtfull and prejudicial to his case,again,I cannot find from the record before the court that,even assuming that,I just don't see where there was prejudice.(Dalrymple's attorney completly failed to challenge the prosocutions case,Refused to investigate,Abandoned his clients only defense,and Claimed a Conflict existed that prevented him from assisting Dalrymple. The Court in response to this revelation Coerced Dalrymple into A Pr0-se defense that was unprepaired,and without physical evidence.

DALRYMPLE TRIED TO TESTIFY IN THE NARATIVE BUT DUE TO PROSECUTOR OBJECTIONS AND THE COURT'S INTERFERANCE WAS UNABLE TO TESTIFY ABOUT HYPNOSIS.DALRYMPLE'S TESTIMONY WITHOUT COROBERATING EVIDENCE TO VERIFY HIS STATEMENTS WAS A FOOLS ERRAND.WHEN MCGLOUGHLIN HAD KNOWLEDGE OF CONFLICT HE CHOSE TO COERCE DALRYMPLE INTO A PRO-SE DEFENSE RATHER THAN HAVE A HEARING TO DETERMINE THE NATURE OF THE CONFLICT.HE WOULDN'T EVEN MENTION THE CONFLICT UNTIL AFTER THE JURY HAD GONE TO DELIBERATE,THEREBY DEPRIVEING DALRYMPLE OF THE OPORTUNITY TO REQUEST A HEARING.SOMEHOW HE JUSTIFIED MAKEING D ANGELO STANDBY COUNSEL AFTER HE CLAIMED CONFLICT...I GUESS IT SHOULD COME AS NO SURPRISE WHEN HE CAN'T FIND PREJUDICE.)

Then on Pg.211 Ln.3 it's as if McGloughlin can't keep himself from saying dumb shit...He got the testimony out.He was able to describe what he did.The jury got to consider it as an issue.He got to present his defense.I can't find that,again,the fact that Mr.Dalrymple elicited that testimony from himself versus through his attorney,that that rose to the level of either,A,ineffective assistance of counsel,or that it would have changed the outcome of the case.(APARENTLY MCGLOUGHLIN BELIEVES DEFENDANTS DON'T NEED OR DESERVE THE BENIFIT OF COUNCEL TO PRESENT THIER DEFENSE.)

Pg.211Ln.12..Yes,there were objections about which Mr.Dalrymple had been warned regarding form of questioning--The rules of evidence, but again that was a risk he chose to take.(DALRYMPLE HAD OPPORTUNITY TO BE PRO-SE BEFORE THIS TRIAL BEGAN.IF DALRYMPLE HAD CHOSEN TO

GO TO TRIAL WITHOUT COUNSEL THAT CHOICE WOULD HAVE BEEN MADE BEFORE THIS TRIAL COMMENCED.IN FACT EVERY TIME DALRYMPLE WAS QUESTIONED ABOUT PROCEEDING WITHOUT COUNSEL HE STATES HE NEEDS AN ATTORNEY. FOR MCGLOUGHLIN TO SAY DALRYMPLE CHOSE SELF REPRESENTATION IS A GROSS MISSREPRESENTATION OF THE FACTS.)

Pg.211 Ln.16..Again I ruled that Mr.D Angelo was ethicaly precluded(CHALLENGED)for going into this area for the reasons he set forth here today,(D Angelo had testified HE DIDN'T UNDERSTAND DALRYMPLE'S DEFENSE AND IT DIDN'T MAKE SENCE TO HIM,AND DALRYMPLE WAS ACTING STUPID,AND THAT HE DIDN'T CARE WHAT DALRYMPLE SAID BECOUSE HE WAS GOING TO DO IT HIS WAY.) Pg.211 Ln.18..and I do agree that in order for Mr.Dalrymple to testify as to his abilities as a hypnotist,there has to be some training,experiance or knowledge that is over and above that of simply an individual.(NOW AGAIN MCGLOUGHLIN'S AN EXPERT IN HYPNOSIS AND DALRYMPLE'S SIMPLE.) LN.24..CERTAINLY,WE DO ALLOW A CERTAIN degree of opinion testimony, But this is one that calls for expertise,And there's been no showing showing here that,By a hypnotist or someonewho's experienced in that area,that,in fact,a lesser standard is required.I think you'll have to speculate.(INEFFECTIVE ASSISTANCE BY SWARTZ)

Pg.212 Ln.5..So,again, a conclusory remark in the affidavit was that he was forced to go to trial with no defense theory and no lawyer,and to the contrary, he had an attorney that was prepared and did cover his denials of any wrongdoing.As far as when he testified,and he was allowed to present his defense theory.

Again,I can'tfind that the presentation of that defense theory was in any way impacted,or to change the outcome of this case becouse it was done Pro-Se versus through his counsel.(IF IT DOESN'T MAKE ANY DIFFERANCE THEN WHY DO YOU SUPPOSE WE HAVE ATTORNEYS AT ALL,AND WHY WOULD THE SUPREME COURT MAKE AN ISSUE OF EFFECTIVE ASSISTANCE.)(MCGLOUGHLIN'S MAKING STUPID,STUPID STATEMENTS)

Pg.212 Ln.17..Based upon those findings,the court then would conclude that the totality of the evidence here,That there was not ineffective assistance of counsel with that one somewhat minor exception,and that was whether or not Mr.D Angelo had fully and completly attempted to find an expert on hypnosis.And when you look at the standard in Strickland again,I don't want to send the higher court a conflicting ruleing on this.But I think it may be that there could have been possibly a little more effort in that area.I frankly cannot find from the totality of the evidence that

that one issue rose to the level of ineffective assistance of counsel.(MCGLOUGHLIN HAS TAKEN FAILURE TO INVESTIGATE,FAILURE TO GATHER PHYSICAL EVIDENCE,FAILURE TO INTERVIEW WITNESSES,ABANDONED CLIENTS ONLY DEFENSE,D ANGELO'S CONFLICT OF INTREST,COMBINED WITH A REFUSAL TO ASSIST IN HIS CLIENT'S DEFENSE..THIS IS WHAT D ANGELO REDILY TESTIFYS TO HAVEING DONE.YET MCGLOUGHLIN SOMEHOW TRIMS IT ALL DOWN TO "ONE MINOR EXCEPTION")

Pg.213 Ln.7..Again,even assuming that it had,I can't find from the totality of the evidence before the court here today,That it would have changed the outcome of this case.(ANOTHER STATEMENT OF INEFFECTIVE ASSISTANCE BY POST CONVICTION COUNSEL-SCHWARTZ) (MCGLOUGHLIN BURIES THE ATTORNEY ON POST CONVICTION IN AN EFFORT TO JUSTIFY THE TRIAL ATTORNEYS INEFFECTIVE ASSISTANCE.)

In Ln.24 Mcgloughlin says "I find it interesting that clearly Mr.Dalrymple wanted an expert in hypnosis...

He then goes on to give an excuse why it doesn't matter.Then delivers to D Angelo a final attaboy for his performance and completly denies the petition for post conviction.

CONCLUSION.

This is not about whether Dalrymple was told his consttutional rights.This is a question of what must Dalrymple do to get fair treatment under those rights?

Dalrymple has maintained Actual Innocence,That he never commited the physical acts upon Kelsea that were the baises for the conviction of the sexual molestation charges.

Dalrymple clearly wanted to present hypnosis and evidence of hypnosis as the foundation of his defense.

D Angelo's failure to investigate left Dalrymple unprepared at his trial,and Schwartz'es representation on Post-Conviction lacked that same component,Which was evidence of hypnosis.

Mcgloughlin denied Dalrymple Due Process at trial by coercing him into a Pro-Se defense after his attorney declaired Conflict of Interest,and not allowing any time to prepare.

Mcgloughlin failed to mention D Angelo's conflict when D Angelo declared it,Thus depriving Dalrymple of a hearing on the matter. (Dalrymple surely would have asked for new counsel AGAIN and Mcgloughlin wanted to avoid that.)

Mcgloughlin made a mockery of Dalrymple's Right To Counsel by appointing D Angelo who had claimed Conflict as Standby Counsel. Mcgloughlin would later claim Dalrymple had the benifit of counsel throughout the trial.

Dalrymple has been denied his right to face his accusers and present evidence in his defense.

During Post-Conviction McGloughlin continues the Denial of Due-Process by ignoreing sworn testimony and then Condoning the shortcomings of both Schwartz and D Angelo.

At both hearings Dalrymple has been Denied Due Process,and due to these denials and the Ineffective Assistance of Both of Dalrymple's counsels,There is a clear Indication that Dalrymple may be Innocent of the charges against him.

Mr.Dalrymple's convictions should therefore be reversed in full The sentences Vacated and the case remanded.

The "Progressing to Sleep" Hypnotising Method

Face committee and say: "All right, everyone, let's all try the experience of entering hypnosis together. You have come on stage for the purpose of being hypnotised, so here is your opportunity to get hypnotised. You will find it a very pleasant experience, so everyone give undivided attention and concentrate. You will become hypnotised.

"All ready. Relax in your chairs, place your feet flat on the floor and rest your hands in your lap. Now direct your eyes fixedly at me and you will find your eyes quickly becoming heavy and tired. I will count slowly from one to ten, and by the time I reach ten your eyes will be closed and you will go to sleep, yet you will continue to hear me and will follow my suggestions at all times."

Gesture towards the committee, while giving the suggestions. This appears dramatic to the audience as well as holding the attention of the subjects. Make sweeping passes with your hands. Repeat the committee encompassing gestures over and over until everyone's eyes are closed.

"Notice how pleasant and relaxed you begin to feel throughout your entire body. You will note a sensation of warmth growing all about you and your eyes feel heavy and tired. All right, I will count slowly from one to ten now, and with every count your eyes will close more and more by the time I reach the count of ten, or before, close your eyes down together and shut out the light. Ready. One ... two ... three ... eyes closing all down tight ... Five ... six ... seven. Close your tight and let them rest. Eight ... nine ... *ten*. Eyes all closed together shut out the light. Eyes all closed tight!"

Glance over the entire committee; all subjects' eyes should be Continue: "It feels so good to close those tired eyes. So good, and so tightly closed you cannot open them try as hard as you will tightly they are shut together. See how they stick."

In working with the entire committee as a unit, do not make any this "eyelid fixation" but continue directly on: "Forget all about eyes now and go to sleep. Go sound to sleep. You are dropping down deeply to sleep. Sleep. Go sound to sleep. Your breaths are ening as you drop down to sleep. Breathe deep and free, and every you take sends you down deeper and deep to sleep. You are completely relaxed and your head falls forward on your chest and, as your head falls forward, you drop off into deep hypnotic sleep. [Head falls forward onto chest by all subjects; any who do not respond to this action are quietly dismissed. If someone in the audience has responded, that person is invited to come on stage and fill the emptied chair.] You are in hypnosis and will follow instantly my every suggestion."

> NOTE TO HYPNOTIST: Observe how this induction compounds one series of suggestions upon another: first, eye closure and dropping asleep; second, breath deepening, producing sleep; third, bodily relaxation and head falling forward on chest; fourth, the suggestion that all suggestions will be responded to immediately. This is a progressive-relaxation method of hypnotising that Pat Collins performs rapidly, directly to the point. She wastes no time and her show is paced for action.

Pat Collins now goes to each hypnotised person in turn and lifts an arm straight up in the air with the command that it is stiff and rigid and they cannot move it; that they cannot lower it try as hard as they will. If anyone lowers their arm that person is immediately dismissed. The emptied chair is immediately filled with another responsive volunteer. All subjects with their arms rigidly upright and unable to move (Pat pulls on each to ascertain the rigidity) are retained. She then suggests:

"All persons with their arm upraised are in hypnosis, and at the count of 'three' your arm will instantly fall relaxed to your side and when it hits your side you will be in deep hypnosis. You will forget all your inhibitions and just have a good time. Just let yourself go! Be prepared to have free and easy swing time. You will instantly respond to everything I tell you." The count is made, and all arms drop on the moment. The show is ready to roll à la Pat Collins's fast-paced routining.

> NOTE TO HYPNOTIST: Observe how the Pat Collins's handling "mentally sets" the subjects to respond rapidly to her suggestions. Further, that suggestions given to hypnotised persons should be clear and direct. Right on target! Pat Collins works on the somnambulistic level of hypnosis, causing the subjects to respond quickly. She expects such reactions, and obtains such accordingly. She also likes to feature the reactions of one subject at a time. When working with a large group in limited stage space, this works splendidly. By way of example, she will call a subject by name, as we'll now see.

At the count of three . . . double the feeling . . . 1 . . . 2 . . . 3 . . .*

As I count you down . . . subcon will take you back to the very first time that feeling arose.

Going back in time now . . . (8) . . . younger and younger . . . (7) . . . smaller and smaller . . . back to being very, very small . . . (6) the feeling is strong . . . (5) . . . (4) . . . (3) . . . (2) . . . (1) . . . Zero . . . There you are . . . now go back to five minutes before the feeling arose and tell me – what's happening? Alone or with someone . . . etc., etc.

Now – feel yourself getting smaller and smaller again, younger and younger – and rise up above your present body and go back along the time-line before your birth . . . or to some time before the cause of your present symptoms . . . sometime before the sensitising event or emotions occurred that sowed the seed for your present problem – to a time perhaps when you felt warm – comforted – supported and sustained – you know there was such a time so – be there now . . . when you're there, your head will nod. Good . . . now – come forward in time to a few moments before the event or experience that created the sensitivity that is producing the unwelcome symptom . . .

When you're there – your right index finger will rise . . . and you'll be able to tell me about it. You're there now – just a few minutes before the causative event . . . tell me . . . where do you find yourself? Have you been born? Are you alone or with someone? . . . Intensify the feeling . . . clarify the picture at the count of three . . . 1 . . . 2 . . . 3 . . .* What's happening now?

'Nothing'.

What do you feel?

'Nothing'.

Say 'I feel nothing because' . . . and finish the sentence . . . etc.

IN THE DISTRICT OF THE FORTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID DALRYMPLE Plaintiff vs. THE STATE OF IDAHO Defendant	Case No. CVPC13-14732 REPLY TO NOTICE OF INTENT TO DISMISS SUCCESSIVE PETITION

IDAHO CODE CRIMINAL PROCEDURE

§ 19-4902 Presentation of issue in prior prceedings

Ineffective assistance of prior post conviction counsel may provide sufficiant reason for permitting newly asserted allegations or allegations inadequatly raised in the initial application to be raised in subsequent post-conviction application.
Schwartz v. State,2008, 177 P.3d 400, 145 Idaho

Relation-back doctrine

When asecond or successive application is presented because because the initial application was summarily dismissed due to the alledged ineffectiveness of the initial post-conviction counsel, use of the relation-back doctrine may be appropriate, because failing to provide a post-conviction applicant with a meaningful opportunity to have his or her claims presented may be violative of due process.

Schwartz v. State,2008

Time for proceedings

If an initial post-conviction action was timely filed and has been concluded,an inmate may file a subsequent application outside of the one year limitation period if the court finds a ground for relief asserted which for sufficiant reason was not asserted or was inadequetly raised in the original, supplemental, or amended application.

Schwartz v.State, 2008

§ 19-4904

Right to counsel

Counsel should be appointed for petitioner seeking post-conviction relief if the petitioner qualifies financially and alleges facts to raise the possibility of a valid claim.

Hust v.State, 2009, 214 P.3d 668, 147 Idaho.

§ 19-4904 CRIMINAL PROCEDURE

Necessity for free provision of counsel

If an applicant seeking post-conviction relief alleges facts that raise the possibility of a valid claim, the district court should appoint counsel in order to give the applicant an opportunity to work with counsel and properly allege the necessary supporting facts.

Gonzalez v. State,2011,254 P.3d 69, 151 Idaho

Adequacy of representation

Although petitioner is not entitled to have counsel appointed in post-conviction proceedings in order to search the record for possible nonfrivoious claims, he should be provided with a meaningful opportunity to supplement the record and to renew his request for court-appointed counsel prior to the dismissal of his petition where he has alleged facts supporting some elements of a valid claim.

Plant v. State, 2006, 152 P.3d 629, 143 Idaho

§ 19-4906

Adequacy of counsel, grounds for relief

A post-conviction proceeding is usually the only method to bring an ineffective assistance of counsel claim.

State v. Yakovac, 2006, 2006 WL 3113540, Unreported

REPLY TO INTENT TO DISMISS SUCCESIVE PETITION

I'm not sure I understand completly Judge Moody's explanation why the court would dismiss my petition. On August 19,2013 I asked the court to appoint counsel. The main reason being to assist in the interpretation of court documents and trained expertise in properly presenting briefs and pleadings, including evidence, to the court.

On August 30,2013 JUdge Moody denied the motion for council on the baises that the successive petition does not allege facts to raise even the possibility of a valid claim.

I would ask you to reconsider.

It is not my intent to present incomplete or inadequate petitions to the court. I am not trained in the law and have little or no expertise. As you can tell by my fileing. I thought however that an accusation substantiated with the record was and is fact.

Specificaly...(1) Trial counsel failed to investigate. (2) Conflict of interest. (3) Dalrymple was constructivly denied counsel. (4) Cumulative errors.

All of these allegations are are substantiated in the transcript included in my August 19, 2013 filing. If for some reason the transcripts failed to arrive on your desk I have once again included them with this reply. They are Supreme Court Docket No. 36973... TRANSCRIPT ON APPEAL. and.. Suppreme Court No. 31398..Case NO. H0301506..H0301629.. APPEAL TRANSCRIPT... and Supreme Court No.31398 Case No. H0301506..H0301629... APPEAL TRANSCRIPT(SUPPLEMENTAL).

DAngelo admits his investigation lacked substance. He didn't even try to in terview Shelley or Kelsea. Which he testifies his client continually requested he do. He failed to subpoena physical evidence his client told him existed to substantiate his claims of hypnosis.And,He failed to secure an expert in hypnosis to interview his client or Kelsea. Which again,His client requested he should do if he intended to represent him properly.

Dalrymple respectfully asks Judge Moody.

Since DAngelo has admitted to these deficiencies in his performance . Doesn't that make them fact?.. And accordingly, prove his representation of Mr.Dalrymple. was ineffective? And, Demonstrate to the court that Dalrymple may have been convicted for acts he did not commit?

Judge Moody also asks why Dalrymple's other claims were not raised in his initial petition for Post Conviction relief?

(1) The District Courts refusal to allow testimony from a key wittness (2)Involuntary choice to represent himself,and the courts coercion.(3) Denial of Constitutional Rights through the courts conduct & decisions. (4) Competency to stand trial.?

The answer to Judge Moody's question in part is,I don't know. Cristopher Schwartz,who was the attorney handeling the initial Post-Conviction,informed me he would be happy to put Kelsea on the stand providing she would testify to the hypnosis. To my knowledge Mr.Schwartz never followed that thought up with an interview of Kelsea,and like Dangelo before him he failed to secure an expert in hypnosis,and failed to determine the existence of hypnotically implanted false memories.

When I arrived at the hearing that evidence and wittness were once again,conspicuously absent. Mr.Schwartz did however explain that he believed the testimony fromKelsea ,or,expert testimony, would not be necessary because he believed Dangelo's admission of his poor handeling of the case along with the record would be enough to overturn the convictions.

I cannot answer as to why Mr.schwartz chose to ignore every other issue in the record.But I'm confident that an attorneys fast & loose handeling of a case is somthing the court has seen before.

As I read Judge Moody'sNotice Of Intent To Dismiss,on page 5 she states Dalrymple has not demonstated or alledged any specific ground for relief raised in his initial Post-Conviction Petition. was inadequetly presented by counsel.

I don't know what Judge Moody is looking for here. I don't understand what needs to be presented. I'm sure it exists I just don't know how to present adequetly to the court.

I think,or thought, Ineffective assistance of counsel would be areasonable conclusion when all the issues are not presented. The record shows inadequetly raised issues by Schwartz.Evidence is not brought,or even investigated in order to substantiate the claims that were brought. I submitted the record of the initial Post - Conviction hearing because Judge McLaughlin focusess on the deficiencies in Schwartz's presentation. The record is evidence of ineffective asisstance. What more do I need?

To Judge Moody respectfully.

Whatever I need to submit to the court to establish factual basis,other than the record,I would happily submit. Just tell me what it is.

In her Motion To Summarily Dissmiss Jean Fisher first attempts to misslead the court by stateing there was ten counts of lewd conduct.She knows that's not true. She claims the evidence I wanted to present was undisclosed. She knows that Dangelo had been informed,and she came to trial armed with case law on hypnosis and used that case law to prevent Dalrymple's testimony about hypnosis. In fact Dalrymple asserted collusion between Jean Fisher and Dangelo, and testified his grounds for makeing such an acusation was Jean Fisher's preparidness with case law readily available about hypnosis.

Jean Fisher states Dalrymple testified as an"expert". Thats not true. Dalrymple never testified as an "expert" nor did he attempt to. In fact, Dalrymple has consistetly maintained he was not an expert,and, That an expert was needed to evaluate his statements and interview Kelsea.

I don't know why,but on page 2 Fisher focuses on a "release date". Or says things like,She would"wake"up from her hypnotized state. Here Fisher selects partial statements and uses them out of context. Another attempt to misslead.

I did in fact try to instill in Kelsea's thinking a time period when she could inform her mother she was not molested.And Kelsea's not asleep. I have no communication with Shelley or Kelsea and I don't know how this suggestion played out. Jean Fisher attempts to misrepresent the facts to suit her agenda.

Jean Fisher knows and recognizes the necessity of an expert in hypnosis to substantiate Dalrymple's claims. She also recognizes Dangelo's and Schwartz's failure to secure an expert,or even attempt to lay proper foundation. So I guess I don't understand her argument. An expert was requested by Dalrymple;before trial,after trial,and during trial.Dalrymple's counsel refused to investigate. That's all true. Why is she arguing ? We're in agreement. Let's call an expert.

I don't have access to a real law library. It's impossible for me to research and quote cases. Jean Fisher has me at a huge disadvantage in that regard. I do however have the facts to my advantage, Providing we move past the distortions of the prosecutor's office.

While I don't have access to experts in hypnosis, once again I have the facts. I also have the next best thing to an expert. Which is experts through books.

(Cristopher Schwartz questioned Dangelo about books on hypnosis, yet never presented them as evidence.) (Improper presentation.)

During his testimony Dangelo focused on a countdown method for induction into hypnosis. Dangelo testified Dalrymple had explained this method to him during an interview at the Ada County jail prior to trial. He also testified he spoke with a Dr. Beaver, and explained the method to him. Dangelo claims Dr.Beaver told him the method was not possible.

I am submitting to the court excerpts from
The Encyclopedia Of Stage Hypnotism, by Ormond McGill.
Precision Therapy, by Duncan McColl.
Scripts & Strategies in Hypnotherapy, by Roger P. Allen.

Each Author presented is an Expert in thier area of practice. And while there are many methods of induction, the only ones I am presenting today make use of a countdown.

The submission of these exibits is intended to add credibility to Dalrymple's statement of method,and,debunk the testimony of Dangelo.

It is my hope these exibits will persuade the court to take a closer look. There was at the time of trial,physical evidence, in the form of journal & tapes & computer, which Dangelo & Schwartz refused to subpoena from Shelley. And of course the interview and testimony of Kelsea.

I have not had communication with Shelley or Kelsea and will require the assistance of the court in gathering more evidence.

Due process issues improperly presented,or inadequetly raised in the original petition,justify the fileing of successive post-conviction claims of Ineffective Assistance of counsel.

As to the issue of Time-Barred.

Jean Fisher once again attempts to misslead the court. While Ms.Fisher claims 4 years has passed since the original Post-conviction was dismissed,and she may be correct,She is not correct however in using that date to do her tolling.

Idaho Code ss 19-4902 Requiers that Post-Conviction petitions be filed within one year from the experation of the time for appeal, or from the determination of an appeal, or fromthe determination of a proceeding following an appeal.

The last fileing in this case is...

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Case No.12-35320

Filed Sep.19,2012

I will include a copy of the filed order.

It is my understanding this is the Date when tolling for this fileing began. The fileing date for this current petition is August 19,2013. Dalrymple asks Judge Moody to find this petition properly filed for time. Thank You.

David Dalrymple.

Petitioner.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID ALLEN DALRYMPLE, Petitioner - Appellant, v. TIMOTHY WENGLER, Respondent - Appellee.	No. 12-35320 D.C. No. 1:10-cv-00494-CWD District of Idaho, Boise ORDER

Before: LEAVY and HURWITZ, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2). All pending motions, if any, are denied as moot.