

12-9-2014

## Takhsilov v. State Clerk's Record Dckt. 42780

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"Takhsilov v. State Clerk's Record Dckt. 42780" (2014). *Not Reported*. 2115.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/2115](https://digitalcommons.law.uidaho.edu/not_reported/2115)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

ALIK G. TAKHSILOV,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42780

CLERK'S RECORD ON APPEAL

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

HONORABLE MELISSA MOODY

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Alik G Takhsilov, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
4/11/2014	NCPC	CCNELSRF	New Case Filed - Post Conviction Relief	District Court Clerk
	CHGA	CCNELSRF	Judge Change: Administrative	Melissa Moody
	PETN	CCNELSRF	Petition and Affidavit for Post Conviction Relief	Melissa Moody
	AFFD	CCNELSRF	Affidavit in Support of Petition for Post Conviction Relief	Melissa Moody
	MOAF	CCNELSRF	Motion & Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Melissa Moody
	MOAF	CCNELSRF	Motion & Affidavit in Support for Appointment of Counsel	Melissa Moody
	CERT	CCNELSRF	Certificate Of Mailing	Melissa Moody
4/23/2014	ORPD	TCHOCA	Subject: Takhsilov, Alik G Order Appointing Public Defender Public defender Ada County Public Defender	Melissa Moody
4/30/2014	MOTN	TCHOCA	Motion to Release PSI in Criminal Case FE-12-01742	Melissa Moody
5/6/2014	ORDR	TCHOCA	Order Releasing PSI	Melissa Moody
5/7/2014	MOTN	CCHOLMEE	Motion for Leave to Amend Petition for Post Conviction	Melissa Moody
	BREF	CCHOLMEE	Brief in Support of Motion	Melissa Moody
5/8/2014	ORDR	DCVOLLCC	Order Granting Leave to Amend	Melissa Moody
5/9/2014	ANSW	TCLAFFSD	Answer To Petition For Post Conviction Relief (Judd for State of Idaho)	Melissa Moody
7/14/2014	MINE	CCMEYEAR	Email between Court and Counsel Re: Amended Petition	Melissa Moody
	MOTN	TCHOLLJM	Motion Permission To Conduct Discovery	Melissa Moody
	AMEN	CCREIDMA	Amended Petition for Post Conviction Relief	Melissa Moody
7/17/2014	HRSC	CCMEYEAR	Hearing Scheduled (Motion 08/04/2014 10:30 AM) to Conduct Discovery	Melissa Moody
		CCMEYEAR	Notice of Hearing	Melissa Moody
	ORDR	CCMEYEAR	Order to Transport 08/04/14	Melissa Moody
7/18/2014	AMEN	CCRADTER	Amended Petition for Post-Conviction Relief	Melissa Moody
	AFFD	CCRADTER	Affidavit in Support of Amended Petition for Post-Conviction Relief	Melissa Moody
7/30/2014	MINE	CCMEYEAR	Email Between Court and Counsel Re: Not Transporting Plaintiff	Melissa Moody
8/4/2014	DCHH	CCNELSRF	Hearing result for Motion scheduled on 08/04/2014 10:30 AM: District Court Hearing Held Court Reporter: Tiffany Fisher Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
	HRSC	CCNELSRF	Hearing Scheduled (Status 01/05/2015 09:00 AM)	Melissa Moody

Alik G Takhsilov, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
8/4/2014	HRSC	CCNELSRF	Hearing Scheduled (Hearing Scheduled 01/12/2015 08:30 AM) Evidentiary Hearing	Melissa Moody
	DCHH	CCNELSRF	Hearing result for Status scheduled on 01/05/2015 09:00 AM: District Court Hearing Held Court Reporter: Fisher Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
8/12/2014	ANSW	TCMEREKV	Answer To The Amended Petition For Post-Conviction Relief (Judd for State of Idaho)	Melissa Moody
9/5/2014	MOTN	TCMEREKV	Motion For Extension Of Time to File Motion For Summary Dismissal	Melissa Moody
9/10/2014	ORDR	CCMEYEAR	Order for Extension of Time to File Motion for Summary Dismissal	Melissa Moody
9/16/2014	MOTN	CCTHIEKJ	Motion for Summary Dismissal	Melissa Moody
9/30/2014	NOTC	DCHOUSKN	Notice of Intent to Dismiss	Melissa Moody
10/17/2014	MOTN	CCMARTJD	Motion to Extend Time for Filing Response to Notice of Intent to Dismiss	Melissa Moody
10/20/2014	BAAT	PDVANVKE	ATTORNEY REASSIGNED BY BATCH PROCESSING (batch process) Kimberly J Simmons, 6909 removed. Nicole Owens, 7679 assigned.	
10/27/2014	ORDR	CCMEYEAR	Order Granting Extension of Time for Filing Response to Notice of Intent to Dismiss (11/26/14)	Melissa Moody
11/28/2014	ORDR	DCHOUSKN	Order Dismissing Amended Petition for Post-Conviction Relief	Melissa Moody
	CDIS	CCMEYEAR	Civil Disposition entered for: State Of Idaho, Other Party; Takhsilov, Alik G, Subject. Filing date: 11/28/2014	Melissa Moody
	STAT	CCMEYEAR	STATUS CHANGED: Closed	Melissa Moody
12/1/2014	HRVC	CCMEYEAR	Hearing result for Hearing Scheduled scheduled on 01/12/2015 08:30 AM: Hearing Vacated Evidentiary Hearing	Melissa Moody
12/9/2014	NOTA	CCGARCOS	NOTICE OF APPEAL	Melissa Moody
	APSC	CCGARCOS	Appealed To The Supreme Court	Melissa Moody
12/11/2014	ORDR	CCMEYEAR	Order Appointing SAPD on Direct Appeal	Melissa Moody

NO. \_\_\_\_\_  
A.M. 10:36 FILED

Inmate Name ALIKK G. TAKSILOV  
IDOC No. 107414  
Address P.O. BOX 14  
BOISE, ID 83707

APR 11 2014

CHRISTOPHER D. RICH, Clerk  
By RIC NELSON  
DEPUTY

MELISSA MOODY

Petitioner

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

ALIK G. TAKHSILOV )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
STATE OF IDAHO )  
 )  
Respondent. )  
 )

**CV PC 1407190**  
Case No. \_\_\_\_\_

**PETITION AND AFFIDAVIT  
FOR POST CONVICTION  
RELIEF**

The Petitioner alleges:

1. Place of detention if in custody: Idaho State Correctional Institution
2. Name and location of the Court which imposed judgement/sentence: Ada County  
Courts of Boise, Idaho.
3. The case number and the offense or offenses for which sentence was imposed:
  - (a) Case Number: CR-FE-2012-0001742
  - (b) Offense Convicted: ROBBERY, BURGLARY
4. The date upon which sentence was imposed and the terms of sentence:
  - a. Date of Sentence: May 07, 2013
  - b. Terms of Sentence: ROBBERY; 3 years fixed, LIFE  
indeterminate, BURGLARY; 1 years fixed, 4 indeterminate

5. Check whether a finding of guilty was made after a plea:

Of guilty                       Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes    No

If so, what was the Docket Number of the Appeal? CR-FE-2012-0001742

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Violation of Sixth Amendment of U.S.C.; Prejudice from the delay, and Anxiety and Concern

(b) Violation of Eighth Amendment of U.S.C.; Cruel and Unusual Punishment of incarceration- Mentally Ill.

(c) Violation of Sixth Amendment of U.S.C. Right to adequate representation of Counsel; ineffective assistance of counsel.

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? NO

b. Any other petitions, motions, or applications in any other court? NO

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

N/A

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) Attorney Patterson came to State Hospital and  
promised that I would be free from all charges.

(b) irreconcilable differences; could not understand  
clearly what counsel was representing me on.

(c) failed to mention that I had a severe mental illness  
that caused me great distress and confusion

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

Yes      [ ] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

Yes      [ ] No

12. State specifically the relief you seek:  
Relief from incarceration, and conviction of aforesaid  
crimes. Mental Health treatment, and or reduced  
sentence.

13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 8<sup>th</sup> day of APRIL, 2014.

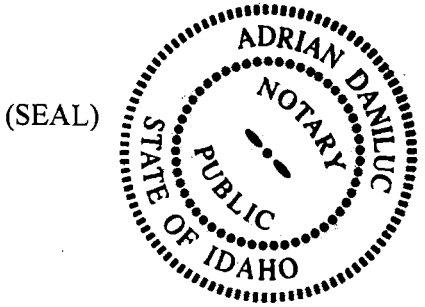
[Signature]  
Petitioner

STATE OF IDAHO )  
 ) ss  
County of ADA )

ALIK G. TAKHSILOV, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

[Signature]  
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 8<sup>th</sup> day of April, 2014.




[Signature]  
Notary Public for Idaho  
Commission expires: 07-16-2019



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of April, 2014, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

ADA County Prosecuting Attorney  
200 WEST FRONT STREET  
BOISE, ID 83702



Petitioner



4. Petitioner deposes that upon his incarceration within Ada County Detention Center in Boise Idaho he was exposed to the Tuberculosis ("TB") infection, while another inmate housed in a cell next to him had been infected with the disease and continually coughed up blood, which in return exposed Takhsilov to the airborne virus which authorities at the detention center offered no remedies for the infection that he had been infected with, known as the TB virus. Takhsilov had received notice that he had been infected with TB and that the official had told him that there had been nothing else more to remedy his condition but to offer antibiotics.

5. Petitioner Takhsilov also contends that upon his preliminary hearing he was ordered to undergo psychiatric evaluations at the Idaho State Mental Hospital ("Blackfoot South") in Blackfoot Idaho. Takhsilov had been diagnosed with Schizophrenia and anxiety disorders. Takhsilov says that upon his counsel ordered by the courts, counsel had contacted Mr. Takhsilov and promised that upon his successful release from the Hospital he would not have any convictions of felonies.

6. Upon the information and promise from his appointed counsel, he untruthfully answered evaluations with the help of his then said "girlfriend" and his girlfriend's friend who had been employed in the Hospital to answer the evaluation questions to manipulate his answers to be released upon his notion that he would not face criminal felony charges.

7. Petitioner Takhsilov is of Russian descent and Russian is his primary language with English being his second language. Takhsilov deposes that during his criminal court proceedings, he required an interpreter to help him understand the court pro-

ceedings and he could only understand the information with the help of his interpreter. Takhsilov contends that his representation of his new counsel-Patterson was minimal at best.

Takhsilov contends that he had at numerous times disclosed to his attorney that he wanted to remain innocent until proven guilty, which he had believed was the course of action his counsel was to take, but had done otherwise.

8. Petitioner had recieved a motion that his counsel-Patterson had moved the court to accept his withdrawal of counsel after his convictions of ROBBERY and BURGLARY on May 7, 2013.

Takhsilov was instructed that if he wished to appeal the convictions he would need to hire another attorney or go forward Pro Se.

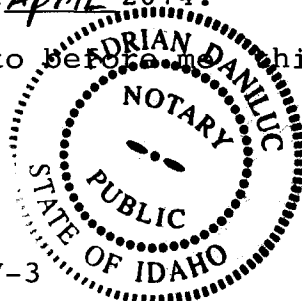
Takhsilov deposes that shortly after the court granted counsel withdrawal, Patterson then filed a Rule 35 motion for reduction of sentence which he had not been advised or consented to and believed that if he had the chance to proceed further with his appeals upon representation by different counsel his convictions now withstanding would have been different.

9. Petitioner Takhsilov believes that these actions of not taking his serious medical conditions of Schizophrenia and anxiety disorder, which has caused him attempted suicides and mental anguish and his irreconsible differences with his attorney of not being advised of his actions as counsel resulted in violations of his 6th and 8th constitutional amendments guaranteed by the United States Constitution.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 8<sup>th</sup> day of April 2014.

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of April, 2014.



NOTARY PUBLIC FOR IDAHO  
COMMISSION EXPIRES 07-16-2019



2.  I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. [ ] I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

**Do not leave any items blank.** If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

**IDENTIFICATION AND RESIDENCE:**

Name: ALIK, TAKHSILOV Other name(s) I have used: \_\_\_\_\_

Address: ISCI - UNIT 16A #47 p.o. BOX 14 Boise ID 83707

How long at that address? 12 months one year. Phone: 208-336 07 40

Date and place of birth: 10-12-1989 GEORGIA

**DEPENDENTS:**

I am  single [ ] married. If married, you must provide the following information:

Name of spouse: \_\_\_\_\_

My other dependents (including minor children) are: \_\_\_\_\_

**INCOME:**

Amount of my income: \$ N/A 0 per [ ] week [ ] month

Other than my inmate account I have outside money from: my AUNT, sometimes send me money to buy commissary food 100\$ a month?

My spouse's income: \$ 150\$ ? per [ ] week [ ] month.

**ASSETS:**

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

List all other property owned by you and state its value.

Description (provide description for each item)	Value
Cash	<u>0</u>
Notes and Receivables	<u>0</u>
Vehicles:	<u>0</u>
Bank/Credit Union/Savings/Checking Accounts	<u>0</u>
Stocks/Bonds/Investments/Certificates of Deposit	<u>0</u>
Trust Funds	<u>0</u>
Retirement Accounts/IRAs/401(k)s	<u>0</u>
Cash Value Insurance	<u>0</u>
Motorcycles/Boats/RVs/Snowmobiles:	<u>0</u>
Furniture/Appliances	<u>0</u>
Jewelry/Antiques/Collectibles	<u>0</u>

**Description** (provide description for each item)

**Value**

TVs/Stereos/Computers/Electronics	0
Tools/Equipment	0
Sporting Goods/Guns	0
Horses/Livestock/Tack	0
Other (describe)	

**EXPENSES:** List all of your monthly expenses.

**Expense**

**Average  
Monthly Payment**

Rent/House Payment	N/A	0
Vehicle Payment(s)		0

Credit Cards: (list each account number)

N/A

Loans: (name of lender and reason for loan)

N/A

Electricity/Natural Gas	0
Water/Sewer/Trash	0
Phone	0
Groceries	0
Clothing	0
Auto Fuel	0
Auto Maintenance	0
Cosmetics/Haircuts/Salons	0
Entertainment/Books/Magazines	0
Home Insurance	0



Expense	Average Monthly Payment
Auto Insurance	0
Life Insurance	0
Medical Insurance	0
Medical Expense	0
Other	


**MISCELLANEOUS:**

How much can you borrow? \$ \_\_\_\_\_ From whom? \_\_\_\_\_

When did you file your last income tax return? \_\_\_\_\_ Amount of refund: \$ \_\_\_\_\_

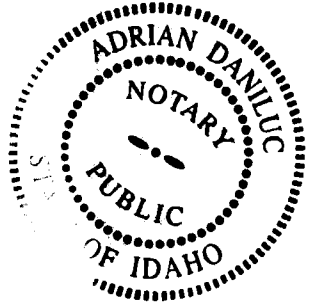
**PERSONAL REFERENCES: (These persons must be able to verify information provided)**


Name	Address	Phone	Years Known
Alex Korotkih,	N/A meridian, ID	208-230-9500	5
Alex Korotkih,	N/A meridian, ID	208-2309500	(Five 5)



Signature  
ALIK G. TAKHSILOV  
Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 8<sup>th</sup> day of April, 2014.



  
Notary Public for Idaho  
Residing at IDAHO  
My Commission expires 07-16-2019

Inmate name Alike G. Takhsilov  
IDOC No. 107414  
Address P.O. BOX 14  
Boise, ID 83707

NO. \_\_\_\_\_  
A.M. 10:50 FILED \_\_\_\_\_  
P.M. \_\_\_\_\_

APR 11 2014

CHRISTOPHER D. RICH, Clerk  
By RIC NELSON  
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALIK G. TAKHSILOV, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
 )

**CV PG 1407192**  
Case No. \_\_\_\_\_

MOTION AND AFFIDAVIT IN  
SUPPORT FOR  
APPOINTMENT OF  
COUNSEL

COMES NOW, ALIK G. TAKHSILOV, Petitioner in the above  
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of  
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for  
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections  
under the direct care, custody and control of Warden YORDY,  
of the Idaho State Correctional Institution

2. The issues to be presented in this case may become to complex for the Petitioner  
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/Respondent required assistance completing these pleadings, as he/she  
was unable to do it him/herself.

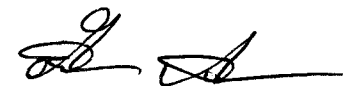
MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

000017

4. Other: \_\_\_\_\_.

DATED this 8<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Petitioner

**AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL**

STATE OF IDAHO            )  
  ) ss  
County of   ADA            )

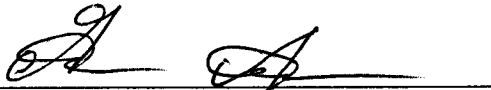
ALIK G. TAKHSILOV, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho State Correctional Institution under the care, custody and control of Warden YORDY;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

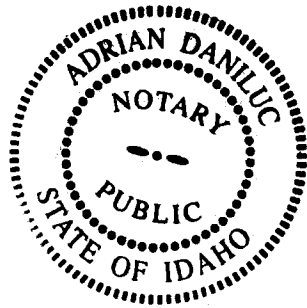
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue its Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

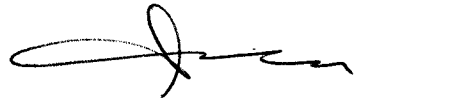
DATED This 8<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 8<sup>th</sup> day  
of April, 2014.

(SEAL)



  
\_\_\_\_\_  
Notary Public for Idaho  
Commission expires: 07-16-2019







122

ALAN E. TRIMMING  
ADA COUNTY PUBLIC DEFENDER

Kimberly Simmons  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

APR 30 2014

CHRISTOPHER D. RICH, Clerk  
By SARA WRIGHT  
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

ALIK G. TAKHSILOV,

Defendant.

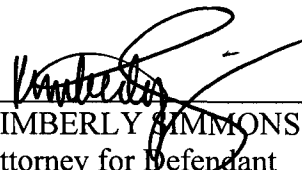
Case No. CR-FE-2012-0001742  
(Civil Case Ref: CV-PC-2014-07192)

MOTION TO RELEASE PSI

COMES NOW, Kimberly Simmons of the Ada County Public Defender's Office, court-appointed counsel for Alik G. Takhsilov, and moves this Court, pursuant to Idaho Criminal Rule 32, for an order releasing the presentence investigation report prepared in the above-entitled case number to undersigned counsel.

The defendant recently filed a Petition for Post-Conviction Relief in Case No. CV-PC-2014-07192. Subsequent to his filing, the Ada County Public Defender's Office was appointed to represent the above-named defendant in post-conviction proceedings. To aid undersigned counsel in the post-conviction proceedings and familiarize counsel with the defendant's case, counsel respectfully requests this Court release a copy of the presentence investigation report generated in the above-entitled case number.

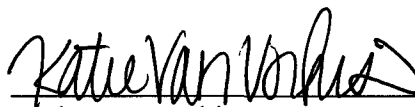
DATED this 30<sup>th</sup> day of April 2014.

  
\_\_\_\_\_  
KIMBERLY SIMMONS  
Attorney for Defendant



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30 day of April 2014, I mailed a true and correct copy of the foregoing to Brett Judd, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.



\_\_\_\_\_  
Katie Van Vorhis

MAY 06 2014

CHRISTOPHER D. RICH, Clerk  
By CINDY HO  
DEPUTY

ALAN E. TRIMMING  
ADA COUNTY PUBLIC DEFENDER

RECEIVED

APR 30 2014

ADA COUNTY CLERK

Kimberly Simmons  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

STATE OF IDAHO,

Plaintiff,

vs.

ALIK G. TAKHSILOV,

Defendant.

Case No. CR-FE-2012-0001742  
(Civil Case Ref: CV-PC-2014-07192)

ORDER RELEASING PSI


This matter having come before the court upon court-appointed counsel's motion, and for good cause appearing, this Court hereby grants counsel's Motion to Release PSI.

A copy of the presentence investigation report prepared on behalf of the defendant in the above-entitled case number shall be made available for review to Kimberly Simmons, court-appointed counsel for the defendant in Case No. CV-PC-2014-07192, to aid counsel in preparation of the pending post-conviction proceedings.

Counsel is to make no copies of the report, shall not disclose the report to any other person outside the Ada County Public Defender's Office, and shall surrender said copy to this Court upon completion of the defendant's post-conviction proceedings in Case No. CV-PC-2014-07192. Failure to comply with any portion of Idaho Criminal Rule 32 may be deemed a contempt of court and may be subject to appropriate sanctions.

IT IS SO ORDERED.

DATED this 2<sup>nd</sup> day of ~~April~~<sup>May</sup> 2014.

  
\_\_\_\_\_  
MELISSA MOODY  
District Judge

*UHO* *cc: AC/PD*

NO. 1010 FILED  
A.M. P.M.

MAY 07 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant

KIMBERLY J. SIMMONS, ISB #6909  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

ALIK G. TAKHSILOV,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2014-07192

MOTION FOR LEAVE TO AMEND  
PETITION FOR POST-CONVICTION  
RELIEF

COMES NOW, ALIK G. TAKHSILOV, the above-named Petitioner, by and through counsel of the Ada County Public Defender's Office, KIMBERLY J. SIMMONS, and submits this Motion for Leave to Amend Petition for Post-Conviction Relief. Petitioner Takhsilov respectfully requests this Court grant counsel the right to amend his *pro se* application for post-conviction relief. A Brief in support of this Motion is forthcoming.

DATED, this 7<sup>th</sup> day of May 2014.

  
KIMBERLY J. SIMMONS  
Attorney for Petitioner

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 7 day of May 2014, I mailed (served) a true and correct copy of the within instrument to:

**Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail**

  
\_\_\_\_\_  
KATIE VAN VORHIS

moody - cindy  
5/8/2014  
SM

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 10:00 P.M.

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**

**MAY 07 2014**

**CHRISTOPHER D. RICH, Clerk**  
**By ELYSHIA HOLMES**  
**DEPUTY**

**KIMBERLY J. SIMMONS, ISB #6909**  
**Deputy Public Defender**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7409**

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

**ALIK G. TAKHSILOV,**

**Case No. CV-PC-2014-07192**

**Petitioner,**

**vs.**

**BRIEF IN SUPPORT OF MOTION FOR**  
**LEAVE TO AMEND PETITION FOR**  
**POST-CONVICTION RELIEF**

**STATE OF IDAHO,**

**Respondent.**

**COMES NOW**, ALIK G. TAKHSILOV, the above-named Petitioner, by and through counsel of the Ada County Public Defender's Office, KIMBERLY J. SIMMONS, and submits the following Brief in Support of his Motion for Leave to Amend Petition for Post-Conviction Relief.

**PROCEDURAL HISTORY**

On May 3, 2013, Petitioner Takhsilov was convicted and sentenced in CR-FE-2012-0001742 on the charges of Robbery, pursuant to Idaho Code §18-6501, and Burglary, pursuant to I.C. §18-1403. He was sentenced to a unified term of Life on the Robbery charge, with 3 years fixed, and a unified term of 5 years on the Burglary charge, with 1 year fixed, to run concurrently. Subsequently, he filed a timely appeal on June 18, 2013. He also filed a Motion to Reconsider Sentence under Idaho Criminal

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO**  
**AMEND PETITION FOR POST-CONVICTION RELIEF**

or

ml

Rule 35 on August 29, 2013. The District Court granted Mr. Takhsilov's Rule 35 motion on August 21, 2013, reducing the Life sentence to 25 years on the Robbery charge, but leaving unchanged the fixed portion of the sentence. Subsequently, his appeal, which solely addressed the length of his sentence, was denied on February 21, 2014, and a remittitur was issued on March 14, 2014. On April 11, 2014, Petitioner Takhsilov filed a Petition and Affidavit for Post-Conviction Relief, in which Petitioner claims several constitutional errors in CR-FE-2012-0001742. On April 23, 2014, the Court appointed the Ada County Public Defender's Office to represent Mr Takhsilov "in all proceedings involving the post conviction petition." The Ada County Public Defender's Office received the Order Appointing Public Defender on April 24, 2014. Undersigned counsel was assigned and received the file on April 29, 2014. After review of a file that contained a Register of Actions for the underlying criminal case and the instant case, the aforementioned Petition, and the Court's Order appointing the Public Defender, Counsel filed a Motion for Leave to Amend Petition for Post-Conviction Relief.

### **ARGUMENT**

A post-conviction relief action is a civil proceeding in which the applicant bears the burden to prove the allegations upon which the request for relief is based. *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct.App.1990); *Pierce v. State*, 109 Idaho 1018, 1019, 712 P.2d 719, 720 (Ct.App.1985). Summary dismissal of a post-conviction application is appropriate only when no genuine issue of material fact exists which, if resolved in the applicant's favor, would entitle him to the requested relief. *Fairchild v. State*, 128 Idaho 311, 315, 912 P.2d 679, 683 (Ct.App.1996). If a genuine issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct.App.1991); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.App.1988).

If a post-conviction applicant is indigent, the trial court may appoint counsel to represent the applicant. I.C. § 19-4904. In *Brown v. State*, 135 Idaho 676, 23 P.3d 138 (2001), the Idaho Supreme Court addressed the standards and procedures for appointment of counsel in post-conviction actions. The *Brown* Court stated that a request for appointed counsel is governed by two statutes, I.C. § 19-4904 and I.C. § 19-852. The Court held that under those statutes, a post-conviction petitioner is entitled

to court-appointed counsel unless the petition is frivolous. *Brown*, 135 Idaho at 678, 679, 23 P.3d at 140, 141. The Court appointed counsel in this case pursuant to those statutes.

The Petitioner should be provided with a meaningful opportunity to supplement the record where he has alleged facts supporting some elements of a valid claim with the assistance of counsel. The Court of Appeals has held that the request for the assistance of counsel in post-conviction proceedings must be addressed, *Fox v. State*, 129 Idaho 881 (Ct.App.1997), and if granted, it logically follows that the Petitioner should be entitled to the assistance of said counsel.

In a post-conviction relief action, applicants do not have a constitutional right to counsel. *Freeman v. State*, 131 Idaho 722, 724, (1998); *Follinus v. State*, 127 Idaho 897, 902 (Ct.App.1995). However, Idaho has provided for the appointment of counsel under I.C. § 19-4904. If an applicant 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. *Charboneau v. State*, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004). Mr. Takhsilov has an interest in securing assistance to adequately present his claims; counsel must be afforded the opportunity to identify the claims that Mr. Takhsilov would like to pursue and to assess the merit of such claims. Without additional time, counsel insists that she cannot provide any assistance to Mr. Takhsilov.

Petitioner Takhsilov's pro se Petition and Affidavit is poorly written, and potentially raises improper or unartful claims. Petitioner should not be barred from pursuing a claim he raised in his initial Petition simply because it was raised improperly. Substance, not form, should govern. See *Dionne v. State*, 93 Idaho 235, 237 (1969). See also *Swader v. State*, 143 Idaho 651, 653-54 (2007) (The Court "should keep in mind that petitions and affidavits filed by a pro se petitioner will often be conclusory and incomplete. Although facts sufficient to state a claim may not be alleged because they do not exist, they also may not be alleged because the pro se petitioner simply does not know what are the essential elements of a claim.").

Further, Judicial economy favors the amendment of Mr. Takhsilov's pro se Petition and Affidavit. The claims he intends to raise are not clear to Counsel, and

without additional time and further review of the case, Counsel cannot represent Mr. Takhsilov. Because the Court has appointed counsel, the Court found that the Petition is not frivolous. Without leave to amend the Petition, the appointment of counsel would be rendered completely meaningless and would have been a waste of not only counsel's time, but the Court's time. There is substantial argument that the denial of this motion would be a sufficient basis for a successive petition. Since there is already an application for post-conviction relief on file, Counsel believes judicial economy will be served by simply allowing counsel a meaningful opportunity to amend his pro se Petition and Affidavit.

**CONCLUSION**

Counsel respectfully requests that this Court grant Petitioner leave to amend the pro se Petition and Affidavit in order to properly frame the raised claims. Counsel also requests permission not only to amend the application to include the claims raised by Mr. Takhsilov, but to include other claims he may have missed

DATED, this 7<sup>th</sup> day of May 2014.

  
\_\_\_\_\_  
KIMBERLY J. SIMMONS  
Attorney for Petitioner



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 7 day of May 2014, I mailed (served) a true and correct copy of the within instrument to:

**Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail**

  
\_\_\_\_\_  
KATIE VAN VORHIS

MAY 08 2014

CHRISTOPHER D. RICH, Clerk  
By CHARLOTTE C. VOLLET  
DEPUTY

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

ALIK G. TAKHSILOV,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

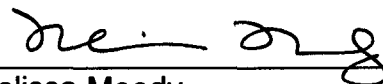
Case No. CV PC 1407192

ORDER GRANTING LEAVE TO AMEND

On May 7, 2014, Petitioner filed a motion for leave to amend his petition for post-conviction relief and a brief in support of the motion. The Court GRANTS Petitioner's motion. Any amended petition must be filed no later than August 15, 2014.<sup>1</sup>

IT IS SO ORDERED.

DATED this 8th day of May 2014.



Melissa Moody  
District Judge

<sup>1</sup> In granting Petitioner's motion, the Court specifically disagrees with the assertion that "[b]ecause the Court has appointed counsel, the Court found that the Petition is not frivolous." *Brief in Support of Motion for Leave to Amend Petition for Post-Conviction Relief*, at 4. The Court did not find that the Petition is frivolous; however, this is different from a finding that the Petition is not frivolous. As Petitioner points out, the Petition is difficult to understand. ("Petitioner Takhsilov's pro se Petition and Affidavit is poorly written, and potentially raises improper or unartful claims." *Brief in Support of Motion for Leave to Amend Petition for Post-Conviction Relief*, at 3.) The Court appointed counsel to explore the *possibility* that Petitioner has a non-frivolous claim.

cu

CERTIFICATE OF MAILING

I hereby certify that on this 9<sup>th</sup> day of May 2014, I mailed (served) a true and correct copy of the within instrument to:

Brett Judd  
ADA COUNTY PROSECUTING ATTORNEY  
VIA INTERDEPARTMENTAL MAIL

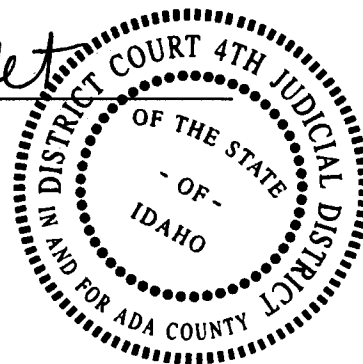
- U.S. Mail, Postage Prepaid
- Interdepartmental Mail
- Electronic Mail
- Facsimile

Kimberly Simmons  
ADA COUNTY PUBLIC DEFENDER  
VIA INTERDEPARTMENTAL MAIL

- U.S. Mail, Postage Prepaid
- Interdepartmental Mail
- Electronic Mail
- Facsimile

CHRISTOPHER D. RICH  
Clerk of the District Court

By: Charlotte Vollet  
Deputy Clerk



Moody-Cindy  
5/12/2014  
SM

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

219

MAY 09 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Brett B. Judd**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

ALIK TAKHSILOV, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
THE STATE OF IDAHO, )  
 )  
Respondent. )

Case No. CV-PC-2014-7192  
**ANSWER TO PETITION FOR POST  
CONVICTION RELIEF**

The State of Idaho, by and through the undersigned Deputy Ada County Prosecuting Attorney, answers the Petition for Post Conviction Relief using the numbering scheme of the defendant's petition as follows:

1. The state lacks sufficient information upon which to base an answer and so denies the claim.
2. The state admits that the defendant was sentenced in Boise, Ada County, Idaho.

SM

MLL

3. The state admits the defendant was convicted of Robbery and Burglary in CRFE-2012-1742.
4. The state denies that the defendant was sentenced on May 7, 2013, to a sentence of three years determinate and life indeterminate for Robbery and one year determinate and 4 years indeterminate for Burglary.
5. The state admits the defendant pled guilty.
6. The state admits that the defendant appealed the imposition of sentence but denies the docket number listed.
7. The state is unable to respond to paragraph seven because it contains legal conclusions not factual allegations. To the extent that any factual allegations are made, the state denies them.
8. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.
9. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.
10. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.
11. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.
12. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.
13. The state admits that the defendant filed an affidavit accompanying his motion.

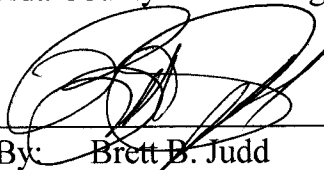
**The State of Idaho asserts the following affirmative defenses to the Petition:**

1. Petitioner's claims that could have been raised in a direct appeal are barred. I.C. §19-4901(b). A UPCPA petition is not a substitute for a direct appeal. In the instant case, the appeal of the petitioner did pursue these issues on direct appeal.
2. Petition for post-conviction relief raises no genuine issue of material fact. I.C. § 19-4906(b), (c). They are not supported by admissible evidence and are mere bare allegations.
3. The Petition fails to allege sufficient facts that would warrant a conclusion that trial counsel was deficient or that any deficiency prejudiced defendant.
4. Petitioner has failed to show that trial counsel was constitutionally deficient or that any deficiency prejudiced him in these proceedings.

Having answered Petitioner's claim, the State of Idaho asks the Court to deny any relief to Petitioner.

DATED this <sup>May</sup> 9 day of ~~April~~, 2014.

**GREG H. BOWER**  
Ada County Prosecuting Attorney



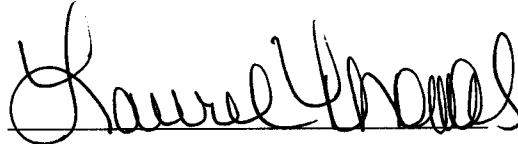
By: Brett B. Judd  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 8<sup>th</sup> day of May 2014, I caused to be served, a true and correct copy of the foregoing ANSWER upon the individual(s) named below in the manner noted:

Name and address: Kimberly Simmons, Ada County Public Defender

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By Hand Delivering said document to defense counsel.
- By emailing a copy of said document to defense counsel.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_



Legal Assistant

**Anna Meyer**

---

**From:** Judge Melissa Moody  
**Sent:** Monday, July 14, 2014 02:19 PM  
**To:** Kimberly Simmons; Brett Judd  
**Cc:** Anna Meyer  
**Subject:** RE: TAKHSILOV, Alik CV-PC-2014-7192

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 219

JUL 14 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

Anna,  
Can you please make sure this is part of the court record in the post-conviction action?  
Thank you.  
Melissa

---

**From:** Kimberly Simmons  
**Sent:** Monday, July 14, 2014 2:18 PM  
**To:** Brett Judd; Judge Melissa Moody  
**Subject:** TAKHSILOV, Alik CV-PC-2014-7192

Judge and Counsel:

My assistant will be filing the Amended Petition in this case shortly. Because my client is in custody at ISCI, he has not yet been able to verify the petition (or sign a short affidavit that I'll be submitting in support of the Amended Petition). I've been trying since last week to set up a visit with him to obtain his signatures, and I can't get an answer at the prison. I've been trying all day, and the phone just rings (no voicemail option). I will be filing the verification and affidavit later this week as soon as I can get his signature. Sorry for the delay.

Kimberly

**Kimberly J. Simmons**  
Deputy Ada County Public Defender  
200 W Front Street, Suite 1107  
Boise, ID 83702  
(208) 287-7400 (office)  
(208) 287-7409 (fax)

**CONFIDENTIALITY NOTICE:**

The information contained in this electronic mail message is privileged and confidential information intended for the use of the addressee listed above. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of action in reliance on the contents of this information is strictly prohibited. If you have received this electronic mail message in error, please immediately notify the sender by telephone.

MM



*Maahy  
Anna Mayell  
DOB  
7-15-14*

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 3:25

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant

JUL 14 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VODAK  
DEPUTY

KIMBERLY J. SIMMONS, ISB #6909  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

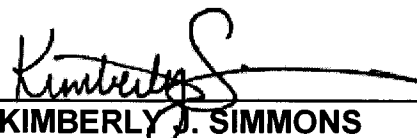
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALIK G. TAKHSILOV,  
  
Petitioner,  
  
vs.  
  
STATE OF IDAHO,  
  
Respondent.

Case No. CV-PC-2014-07192  
  
MOTION FOR PERMISSION TO  
CONDUCT DISCOVERY

COMES NOW, ALIK G. TAKHSILOV, the above-named Petitioner, by and through counsel, KIMBERLY J. SIMMONS, of the Ada County Public Defender's Office, and moves this Court pursuant to Idaho Criminal Rule 57(b), for permission to conduct discovery in this case. In the Amended Petition for Post-Conviction Relief, he alleges several claims of ineffective assistance of counsel which require further investigation outside the record, as well as review of a video that was disclosed during the underlying criminal proceedings. In order to protect Petitioners' rights to the effective assistance of counsel and to a full and fair hearing on his claims, this Court should permit him to conduct discovery in this case.

DATED this 14<sup>th</sup> day of July, 2014.

  
KIMBERLY J. SIMMONS  
Attorney for Petitioner

*JH*

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 14 day of July 2014, I mailed (served) a true and correct copy of the within instrument to:

**Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail**

  
\_\_\_\_\_  
KATIE VAN VORHIS

JUL 14 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIKDAK  
DEPUTY

**ADA COUNTY PUBLIC DEFENDER**  
Attorneys for Defendant

**KIMBERLY J. SIMMONS, ISB #6909**  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

**ALIK G. TAKHSILOV,**  
  
**Petitioner,**  
  
**vs.**  
  
**STATE OF IDAHO,**  
  
**Respondent.**

**Case No. CV-PC-2014-07192**

**AMENDED PETITION FOR POST-  
CONVICTION RELIEF**

**COMES NOW**, ALIK G. TAKHSILOV, the above-named Petitioner, by and through post-conviction counsel at the Ada County Public Defender's Office, KIMBERLY J. SIMMONS, and submits this Amended Petition for Post-Conviction Relief pursuant to Idaho Code §19-4901 and Idaho Criminal Rule 57. This Court has jurisdiction over the action pursuant to I.C. § § 19-4901, *et seq.*; Idaho Criminal Rule (I.C.R) 57; and Article I, Sections 1 and 5 of the Idaho Constitution. Mr. Takhsilov relies on Article I, §§ 1, 5, 6 and 13 of the Idaho Constitution, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution in support of this Petition for Post-Conviction Relief (*hereinafter* Petition). Petitioner Takhsilov incorporates all the claims asserted in his *pro-se* Petition for Post-Conviction Relief and attached Affidavit, filed April 8, 2014. Petitioner does not intend to waive any claims previously raised that have not otherwise been incorporated into this Amended Petition.

*MS*

**I. BACKGROUND (I.C.R. 57(a)(1) through (a)(6), (a)(8))**

- A.** Mr. Takhsilov is currently under the custody of the Idaho Department of Correction and is housed at the Idaho State Correctional Institution.
- B.** A Judgment of Conviction and Sentence was entered in Ada County District Court against Petitioner Takhsilov by Honorable Judge Melissa Moody on May 7, 2013.
- C.** Mr. Takhsilov stands convicted of Robbery (Count I), pursuant to Idaho Code §18-6501, and Burglary (Count III), pursuant to I.C. §18-1401, pursuant to a plea of guilty accepted by on March 5, 2013 in the District Court of Ada County, Case No. CR-FE-2012-1742.
- D.** Prior to the entry of plea, Mr. Takhsilov, through counsel, filed a Motion to Suppress on Dec. 20, 2012. Judge Moody denied that motion after hearing and argument on February 22, 2013.
- E.** On May 7, 2013, the Court imposed a unified sentence of Life on Count I, consisting of 3-years fixed and life indeterminate; and a unified sentence of 5-years on Count III, consisting of 1-year fixed and 4-years indeterminate to run concurrent to Count I.
- F.** Mr. Takhsilov filed a timely Notice of Appeal on June 18, 2013. The State Appellate Public Defender was appointed to represent Mr. Takhsilov on his appeal.
- G.** In his appeal, Mr. Takhsilov challenged his sentence, claiming it was excessive.
- H.** While the appeal was pending, Mr. Takhsilov, through counsel, filed a Motion pursuant to Idaho Criminal Rule 35 on August 29, 2013, requesting leniency on his life sentence. Despite the State's opposition, filed September 9, 2013, Judge Moody entered an order granting Mr. Takhsilov's request and entered a reduced sentence on Count I to a unified term of 25-years, consisting of 3-years fixed and 22-years indeterminate.
- I.** The Idaho Court of Appeals affirmed his sentence on February 21, 2014, Docket No. 41126. A Remittitur was entered on March 14, 2014.

- J. Mr. Takhsilov filed a *pro-se* Petition for Post-Conviction Relief on April 11, 2014. The Ada County Public Defender's Office was appointed to represent Mr. Takhsilov pursuant to his request in the Petition on April 23, 2014.
- K. Other than the aforementioned appeal, Docket No. 41126, and the *pro-se* shell Petition for Post-Conviction Relief, this is Mr. Takhsilov's first attempt to obtain relief from his judgment of conviction and sentence.

## II. ILLEGAL RESTRAINT OF LIBERTY

Mr. Takhsilov is a person restrained of his liberty in that he is under the custody and control of the Idaho Department of Correction. This restraint is pursuant to the sentence imposed by the Court in *State v. Takhsilov*, Ada County Case No. CR-FE-2012-7192. This restraint is illegal because the sentence was obtained in violation of the Constitutions of the State of Idaho and the United States, and in violation of court rules, statutes and other law as set forth below.

## III. GROUNDS FOR RELIEF (I.C.R. 57 (a)(7), (a)(9))

The conviction and sentence entered against Mr. Takhsilov was obtained in violation of the Fourth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 1, 5, 6, and 13 of the Idaho Constitution.

Because a majority of Mr. Takhsilov's claims involve allegations that his trial counsel was ineffective in his representation of him, the standard governing ineffective assistance of counsel claims is integral to Mr. Takhsilov's Petition. The Sixth Amendment right to counsel guarantees a criminal defendant effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). Idaho has adopted the *Strickland* two-prong test in evaluating whether a criminal defendant was denied the right to the effective assistance of counsel. *Dunlap v. State*, 141 Idaho 50, 59 (2004). Specifically, a defendant must prove both that his or her counsel's performance was deficient, and that counsel's deficient performance prejudiced his or her case. *Id.* To show deficient performance, a defendant must demonstrate that his or her attorney's representation fell below an objective standard of reasonableness. *Id.* To show prejudice, the defendant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Id.* A defendant must prove his claims by a preponderance of the evidence. *Id.* at 56. Even if

individual claims do not independently show prejudice, the Court must consider whether the accumulation of error creates the degree of prejudice entitling a petitioner to relief. *Mak v. Blodgett*, 970 F.2d 614 (9<sup>th</sup> Cir. 1992).

When assessing the reasonableness of counsel's decisions, this Court owes deference to counsel's strategic decision; however, "[t]he relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481 (2000) (citations omitted).

Mr. Takhsilov asserts all claims of ineffective assistance of counsel alleged herein satisfy both prongs of the *Strickland* analysis. Specifically, Mr. Takhsilov's claims for relief show (1) a deficiency in trial counsel's performance, and (2) that Mr. Takhsilov was prejudiced by the deficient performance. *See generally Strickland*, 466 U.S. at 687. Mr. Takhsilov alleges that even if some individual claims do not meet the governing level of prejudice independently, when considered collectively, the accumulation of error creates prejudice entitling him to relief. *Blodgett*, 970 F.2d 614.

**A. Mr. Takhsilov's Sentence Constitutes Cruel And Unusual Punishment**

Mr. Takhsilov asserts that he has been convicted and sentenced in violation of the Eighth Amendment to the U.S. Constitution and Article I, §6 of the Idaho Constitution. Mr. Takhsilov is a man diagnosed with several mental illnesses, including severe schizophrenia and anxiety disorders. He has been hospitalized several times in Boise as well as the Idaho State Hospitals for his mental illness. He reports hearing voices as a teenager in Russia. On March 13, 2012, during the pendency of the underlying criminal matter in this case, Mr. Takhsilov was determined incompetent to proceed. He was transferred to Idaho State Hospital South pursuant to I.C. § 18-212. He was admitted on April 11, 2012, and treated to restore his competency. At the time of his discharge, he was diagnosed with PTSD, Major Depression with Psychotic Features, Alcohol abuse and malingering. His status was listed as severe as he had a chronic mental illness combined with substance abuse and limited social support. He was prescribed several medications and instructed to take them in order to manage his mental illness. He was returned to Court from the State Hospital on June 11, 2012 and determined competent to proceed.

Prisons were never intended as facilities for the mentally ill, yet that is one of their primary roles today. Many of the men and women who cannot get mental health treatment in the community are swept into the criminal justice system after they commit a crime. In the United States, there are three times more mentally ill people in prisons than in mental health hospitals, and prisoners have rates of mental illness that are two to four times greater than the rates of members of the general public.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment by the States. Punishment is cruel and unusual if it is inflicted in an uncivilized and inhumane way. *Furman v. Georgia*, 408 U.S. 328, 268 (1972) (Brennan, J., concurring); *Trop v. Dulles*, 356 U.S. 86, 99 (1958). Therefore, the legislature's power to punish must be "exercised within the limits of civilized standards." *Trop*, 356 U.S. at 100.

The standards of a civilized society may be measured by its history as well as its evolving moral and legal standards. The history to be considered includes that which was considered cruel and unusual at the time the Bill of Rights was adopted. *Ford v. Wainwright*, 477 U.S. 399, 405 (1986).

The history of what was considered cruel and unusual at the time the Bill of Rights was adopted indicates that it "was well settled at common law that 'idiots,' together with 'lunatics,' were not subject to punishment for criminal acts committed under those incapacities." *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989). Even before the adoption of the Constitution, the law recognized that it was both morally and logically abhorrent to punish a person for acts committed because of mental illness. See, *Elkins*, supra, at 160 et seq. See also, *U.S. v. Denny-Shaffer*, 2 F.3d 999, 1012 (10th Cir. 1993) ("it has always been the case that the law has been loath to assign criminal responsibility to an actor who was unable, at the time he committed the crime, to know either what was being done or that it was wrong").

Near the time of the adoption of the United States Constitution, Sir Edward Coke noted that punishing the mentally irresponsible served no purpose:

[T]he execution of an offender is for example, ut poena ad paucos ad omnes perveniat (that the punishment may reach the few, but the fear of it affect all); but so it is not when a madman is executed; but should be a

miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others.

6 Coke's Third Institutes. (4th ed. 1797), p.6.

Justice Douglas agreed with Coke that punishing the insane does not deter others from criminal conduct:

'Nothing can more strongly illustrate the popular ignorance respecting insanity than the proposition, equally objectionable in its humanity and its logic, that the insane should be punished for criminal acts in order to deter other insane persons from doing the same thing.'

*Robinson v. California*, 370 U.S. 660, 668 (1962) (Douglas, J., concurring) (*quoting* Treatise on the Medical Jurisprudence of Insanity (5th Edition 1871) p. 56).

Moreover, the Court has relied on the understanding that to punish the insane is cruel and unusual punishment. In *Penry v. Lynaugh*, 492 U.S. 302 (1989), the Court considered whether it was cruel and unusual punishment for a state to execute a mentally retarded individual. The Court stated in part:

The common law prohibition against punishing "idiots" for their crimes suggests that it may indeed be "cruel and unusual" punishment to execute persons who are profoundly or severely retarded and wholly lacking in the capacity to appreciate the wrongfulness of their actions. Because of the protections afforded by the insanity defense today, such a person is not likely to be convicted or face the prospect of punishment.

*Penry*, 492 U.S. at 333 (emphasis added).

In Idaho, the safeguard the Court relied on in *Penry* does not exist. As a consequence, conviction, imprisonment and or execution of a mentally ill defendant constitute punishments that are cruel and unusual in violation of the Eighth Amendment.

And, "[a]lthough the determination that a severe punishment is excessive may be grounded in a judgment that it is disproportionate to the crime, the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment." *Furman v. Georgia*, 408 U.S. 328, 280 (1972) (Brennan, J., concurring).

Punishing a person for an act committed as a result of mental illness is nothing more than a gratuitous infliction of pain. It serves no penal purpose and is not a deterrent for other people.



The evolving standards of decency in the United States reflect that only four of the fifty states have abolished the insanity defense. The other forty-six States, the federal government and the 100 State Parties to the Rome Statute all recognize that mental illness may constitute a defense to criminal charges in a way other than relating merely to the ability to form the required mental state.

In holding that the Eighth Amendment prohibits the execution of mentally retarded offenders, the Court looked to define evolving standards of decency and contemporary values by looking to objective factors and stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (quoting *Perry*, supra, 492 U.S. at 331).

Certainly, the forty-six states, the federal government and the 100 State Parties to the Rome Statute that recognize an insanity defense evidence both a national consensus and an international consensus that sentencing a man to death for an act committed as a result of mental illness is not in comport with the evolving standards of decency that mark the progress of a maturing society.

Because the abolishment of the insanity defense in Idaho is inconsistent with the current, the evolving and the historical morals and laws of the United States and most other countries of the world, that abolishment, as reflected in I.C. §18-207(1), and concomitant imprisonment of the mentally ill is cruel and unusual and violates the Eighth Amendment. *Atkins*, supra; *Simmons*, supra; see also, *Robinson v. California*, 370 U.S. 660 (1962) (punishment cannot be inflicted on the basis of a physical or mental condition of a person).

Reports indicate that Mr. Takhsilov was under the influence of alcohol and illegal drugs on the night in question, exacerbating his mental illness. Therefore, his mental illness was a significant factor in the alleged conduct in this case. Based upon this fact, and his long history of mental illness, Mr. Takhsilov asserts that his imprisonment in this case violates the Eighth Amendment to the U.S. Constitution as cruel and unusual punishment.

**B. Trial Counsel Was Ineffective For Failing to Request a Mental Health Evaluation Under I.C. § 18-211**

Mr. Takhsilov suffers from chronic mental illness. Pursuant to an evaluation under I.C. § 18-211, he was found incompetent to proceed on March 13, 2012. After a short stay at the Idaho State Hospital, Mr. Takhsilov was deemed competent to proceed and returned to court on June 11, 2012. Mr. Takhsilov reports that prior to the entry of his guilty plea on March 5, 2013, he began hearing voices and was suffering greatly from his mental illness, deeming him once again incompetent. Mr. Takhsilov asserts that trial counsel was ineffective for failing to request another evaluation under I.C. § 18-211. He claims that because his symptoms returned prior to the entry of his guilty plea, that he was not competent to enter his guilty plea on March 5, 2013. He asserts that trial counsel should have requested another competency evaluation to during his fitness to proceed, and that had an evaluation been completed, he would have been deemed incompetent once again. Mr. Takhsilov contends that his counsel's performance was deficient under *Strickland*, and prejudiced his right to the effective assistance of counsel.

**C. Trial Counsel Was Ineffective For Failing to Advise Mr. Takhsilov of His Right to Appeal**

Mr. Takhsilov asserts that trial counsel failed to advise him of his right to appeal. Due to the lack of such advisement, Mr. Takhsilov did not know that he could reserve his right to appeal the denial of the motion to suppress in this case. Thus, on March 5, 2013, when he entered his guilty plea, he did not request nor did counsel advise him that he could request a conditional plea in which he reserved the right to appeal the denial of the motion to suppress.

The failure to file an appeal on behalf of a client who makes such a request, is per se ineffective assistance of counsel. *Flores v. State*, 104 Idaho 191 (Ct.App. 1983). Mr. Takhsilov didn't understand that he could even make such a request, thus the failure to even advise him of such a right is ineffective assistance of counsel.


**IV. PRAYERS FOR RELIEF**

**WHEREFORE**, the Petitioner, Alik G. Takhsilov, respectfully prays this Honorable Court:

- A. To allow civil discovery pursuant to the Idaho Rules of Civil Procedure and Idaho Criminal Rule 57 (b);

- B. For an evidentiary hearing on the merit of the petition; and
- C. For such other, further relief as, to the Court, seems just and equitable.

DATED this 14<sup>th</sup> day of July 2014.

  
KIMBERLY SIMMONS  
Attorney for Defendant

**VERIFICATION BY PETITIONER**

I declare under penalty of perjury pursuant to the law of the state of Idaho that the foregoing petition is correct and that the matters and allegations therein set forth are true. This declaration is made pursuant to IDAHO CODE § 9-1406 and ICR 2.1.

---

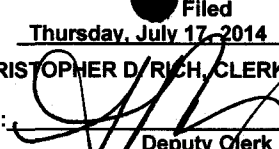
**ALIK G. TAKHSILOV**  
**Petitioner**

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 14 day of July 2014, I mailed (served) a true and correct copy of the within instrument to:

**Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail**

  
\_\_\_\_\_  
KATIE VAN VORHIS

Filed  
Thursday, July 17, 2014 at 08:28 AM  
CHRISTOPHER D. RICH, CLERK OF THE COURT  
BY:   
Deputy Clerk

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

ALIK G TAKHSILOV,  
Plaintiff,

vs.

STATE OF IDAHO,  
Defendant.

Case No. CV-PC-2014-07192

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion for Permission to Conduct Discovery:

Monday, August 04, 2014 at 10:30 AM  
Judge: Melissa Moody

ADA COUNTY COURTHOUSE 200 W. Front Street, Boise, Idaho

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this 17th day of July, 2014.

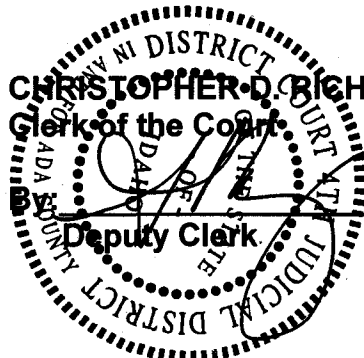
Kimberly J Simmons  
ADA COUNTY PUBLIC DEFENDER

- By United States mail
- By Interdepartmental mail
- By personal delivery
- By overnight mail/Federal Express

Brett B Judd  
ADA COUNTY PROSECUTING ATTORNEY

- By United States mail
- By Interdepartmental mail
- By personal delivery
- By overnight mail/Federal Express

Dated this 17th day of July, 2014.



NOTICE OF HEARING

JUL 17 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

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

ALIK G TAKHSILOV,  
Plaintiff,

vs.

STATE OF IDAHO,  
Defendant.

Case No. CV-PC-2014-07192

ORDER TO TRANSPORT

It appearing that the above-named defendant is in the custody of the Idaho Department of Corrections, and that it is necessary that he be brought before the Court for further proceedings;

IT IS THEREFORE ORDERED that the Sheriff of Ada County, State of Idaho, bring the defendant to the Court in Boise, Idaho, County of Ada, State of Idaho for:

**MOTION FOR DISCOVERY.....Monday, August 04, 2014 @ 10:30 AM**

IT IS FURTHER ORDERED that immediately following the court appearance, the Sheriff return the said defendant to the custody of the Department of Corrections.

IT IS FURTHER ORDERED that the Department of Corrections release the said defendant to the Sheriff of Ada County, State of Idaho, for the purpose of the aforementioned appearance and retake him into custody from the said sheriff upon his return to the Department of Corrections.

DATED this 17th day of July, 2014.



MELISSA MOODY  
District Judge

Copies to:

ADA COUNTY PROSECUTOR  
INTERDEPARTMENTAL MAIL

ADA COUNTY PUBLIC DEFENDER  
INTERDEPARTMENTAL MAIL

ADA COUNTY JAIL  
BY FAX (1)

DEPARTMENT OF CORRECTIONS  
CENTRAL RECORDS  
1299 NORTH ORCHARD STREET SUITE 110  
BOISE ID 83706  
BY FAX (1)



JUL 18 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**

**KIMBERLY J. SIMMONS, ISB #6909**  
**Deputy Public Defender**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7409**

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

**ALIK G. TAKHSILOV,**  
  
**Petitioner,**  
  
**vs.**  
  
**STATE OF IDAHO,**  
  
**Respondent.**

**Case No. CV-PC-2014-07192**

**AMENDED PETITION FOR POST-  
CONVICTION RELIEF**

**COMES NOW**, ALIK G. TAKHSILOV, the above-named Petitioner, by and through post-conviction counsel at the Ada County Public Defender's Office, KIMBERLY J. SIMMONS, and submits this Amended Petition for Post-Conviction Relief pursuant to Idaho Code §19-4901 and Idaho Criminal Rule 57. This Court has jurisdiction over the action pursuant to I.C. § § 19-4901, *et seq.*; Idaho Criminal Rule (I.C.R) 57; and Article I, Sections 1 and 5 of the Idaho Constitution. Mr. Takhsilov relies on Article I, §§ 1, 5, 6 and 13 of the Idaho Constitution, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution in support of this Petition for Post-Conviction Relief (*hereinafter* Petition). Petitioner Takhsilov incorporates all the claims asserted in his *pro-se* Petition for Post-Conviction Relief and attached Affidavit, filed April 8, 2014. Petitioner does not intend to waive any claims previously raised that have not otherwise been incorporated into this Amended Petition.

TR



**I. BACKGROUND (I.C.R. 57(a)(1) through (a)(6), (a)(8))**

- A. Mr. Takhsilov is currently under the custody of the Idaho Department of Correction and is housed at the Idaho State Correctional Institution.
- B. A Judgment of Conviction and Sentence was entered in Ada County District Court against Petitioner Takhsilov by Honorable Judge Melissa Moody on May 7, 2013.
- C. Mr. Takhsilov stands convicted of Robbery (Count I), pursuant to Idaho Code §18-6501, and Burglary (Count III), pursuant to I.C. §18-1401, pursuant to a plea of guilty accepted by on March 5, 2013 in the District Court of Ada County, Case No. CR-FE-2012-1742.
- D. Prior to the entry of plea, Mr. Takhsilov, through counsel, filed a Motion to Suppress on Dec. 20, 2012. Judge Moody denied that motion after hearing and argument on February 22, 2013.
- E. On May 7, 2013, the Court imposed a unified sentence of Life on Count I, consisting of 3-years fixed and life indeterminate; and a unified sentence of 5-years on Count III, consisting of 1-year fixed and 4-years indeterminate to run concurrent to Count I.
- F. Mr. Takhsilov filed a timely Notice of Appeal on June 18, 2013. The State Appellate Public Defender was appointed to represent Mr. Takhsilov on his appeal.
- G. In his appeal, Mr. Takhsilov challenged his sentence, claiming it was excessive.
- H. While the appeal was pending, Mr. Takhsilov, through counsel, filed a Motion pursuant to Idaho Criminal Rule 35 on August 29, 2013, requesting leniency on his life sentence. Despite the State's opposition, filed September 9, 2013, Judge Moody entered an order granting Mr. Takhsilov's request and entered a reduced sentence on Count I to a unified term of 25-years, consisting of 3-years fixed and 22-years indeterminate.
- I. The Idaho Court of Appeals affirmed his sentence on February 21, 2014, Docket No. 41126. A Remittitur was entered on March 14, 2014.

- J. Mr. Takhsilov filed a *pro-se* Petition for Post-Conviction Relief on April 11, 2014. The Ada County Public Defender's Office was appointed to represent Mr. Takhsilov pursuant to his request in the Petition on April 23, 2014.
- K. Other than the aforementioned appeal, Docket No. 41126, and the *pro-se* shell Petition for Post-Conviction Relief, this is Mr. Takhsilov's first attempt to obtain relief from his judgment of conviction and sentence.

## II. ILLEGAL RESTRAINT OF LIBERTY

Mr. Takhsilov is a person restrained of his liberty in that he is under the custody and control of the Idaho Department of Correction. This restraint is pursuant to the sentence imposed by the Court in *State v. Takhsilov*, Ada County Case No. CR-FE-2012-7192. This restraint is illegal because the sentence was obtained in violation of the Constitutions of the State of Idaho and the United States, and in violation of court rules, statutes and other law as set forth below.

## III. GROUNDS FOR RELIEF (I.C.R. 57 (a)(7), (a)(9))

The conviction and sentence entered against Mr. Takhsilov was obtained in violation of the Fourth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 1, 5, 6, and 13 of the Idaho Constitution.

Because a majority of Mr. Takhsilov's claims involve allegations that his trial counsel was ineffective in his representation of him, the standard governing ineffective assistance of counsel claims is integral to Mr. Takhsilov's Petition. The Sixth Amendment right to counsel guarantees a criminal defendant effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). Idaho has adopted the *Strickland* two-prong test in evaluating whether a criminal defendant was denied the right to the effective assistance of counsel. *Dunlap v. State*, 141 Idaho 50, 59 (2004). Specifically, a defendant must prove both that his or her counsel's performance was deficient, and that counsel's deficient performance prejudiced his or her case. *Id.* To show deficient performance, a defendant must demonstrate that his or her attorney's representation fell below an objective standard of reasonableness. *Id.* To show prejudice, the defendant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Id.* A defendant must prove his claims by a preponderance of the evidence. *Id.* at 56. Even if

individual claims do not independently show prejudice, the Court must consider whether the accumulation of error creates the degree of prejudice entitling a petitioner to relief. *Mak v. Blodgett*, 970 F.2d 614 (9<sup>th</sup> Cir. 1992).

When assessing the reasonableness of counsel's decisions, this Court owes deference to counsel's strategic decision; however, "[t]he relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481 (2000) (citations omitted).

Mr. Takhsilov asserts all claims of ineffective assistance of counsel alleged herein satisfy both prongs of the *Strickland* analysis. Specifically, Mr. Takhsilov's claims for relief show (1) a deficiency in trial counsel's performance, and (2) that Mr. Takhsilov was prejudiced by the deficient performance. *See generally Strickland*, 466 U.S. at 687. Mr. Takhsilov alleges that even if some individual claims do not meet the governing level of prejudice independently, when considered collectively, the accumulation of error creates prejudice entitling him to relief. *Blodgett*, 970 F.2d 614.

**A. Mr. Takhsilov's Sentence Constitutes Cruel And Unusual Punishment**

Mr. Takhsilov asserts that he has been convicted and sentenced in violation of the Eighth Amendment to the U.S. Constitution and Article I, §6 of the Idaho Constitution. Mr. Takhsilov is a man diagnosed with several mental illnesses, including severe schizophrenia and anxiety disorders. He has been hospitalized several times in Boise as well as the Idaho State Hospitals for his mental illness. He reports hearing voices as a teenager in Russia. On March 13, 2012, during the pendency of the underlying criminal matter in this case, Mr. Takhsilov was determined incompetent to proceed. He was transferred to Idaho State Hospital South pursuant to I.C. § 18-212. He was admitted on April 11, 2012, and treated to restore his competency. At the time of his discharge, he was diagnosed with PTSD, Major Depression with Psychotic Features, Alcohol abuse and malingering. His status was listed as severe as he had a chronic mental illness combined with substance abuse and limited social support. He was prescribed several medications and instructed to take them in order to manage his mental illness. He was returned to Court from the State Hospital on June 11, 2012 and determined competent to proceed.

Prisons were never intended as facilities for the mentally ill, yet that is one of their primary roles today. Many of the men and women who cannot get mental health treatment in the community are swept into the criminal justice system after they commit a crime. In the United States, there are three times more mentally ill people in prisons than in mental health hospitals, and prisoners have rates of mental illness that are two to four times greater than the rates of members of the general public.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment by the States. Punishment is cruel and unusual if it is inflicted in an uncivilized and inhumane way. *Furman v. Georgia*, 408 U.S. 328, 268 (1972) (Brennan, J., concurring); *Trop v. Dulles*, 356 U.S. 86, 99 (1958). Therefore, the legislature's power to punish must be "exercised within the limits of civilized standards." *Trop*, 356 U.S. at 100.

The standards of a civilized society may be measured by its history as well as its evolving moral and legal standards. The history to be considered includes that which was considered cruel and unusual at the time the Bill of Rights was adopted. *Ford v. Wainwright*, 477 U.S. 399, 405 (1986).

The history of what was considered cruel and unusual at the time the Bill of Rights was adopted indicates that it "was well settled at common law that 'idiots,' together with 'lunatics,' were not subject to punishment for criminal acts committed under those incapacities." *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989). Even before the adoption of the Constitution, the law recognized that it was both morally and logically abhorrent to punish a person for acts committed because of mental illness. See, *Elkins*, supra, at 160 et seq. See also, *U.S. v. Denny-Shaffer*, 2 F.3d 999, 1012 (10th Cir. 1993) ("it has always been the case that the law has been loath to assign criminal responsibility to an actor who was unable, at the time he committed the crime, to know either what was being done or that it was wrong").

Near the time of the adoption of the United States Constitution, Sir Edward Coke noted that punishing the mentally irresponsible served no purpose:

[T]he execution of an offender is for example, ut poena ad paucos ad omnes perveniat (that the punishment may reach the few, but the fear of it affect all); but so it is not when a madman is executed; but should be a

miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others.

6 Coke's Third Institutes. (4th ed. 1797), p.6.

Justice Douglas agreed with Coke that punishing the insane does not deter others from criminal conduct:

'Nothing can more strongly illustrate the popular ignorance respecting insanity than the proposition, equally objectionable in its humanity and its logic, that the insane should be punished for criminal acts in order to deter other insane persons from doing the same thing.'

*Robinson v. California*, 370 U.S. 660, 668 (1962) (Douglas, J., concurring) (*quoting* Treatise on the Medical Jurisprudence of Insanity (5th Edition 1871) p. 56).

Moreover, the Court has relied on the understanding that to punish the insane is cruel and unusual punishment. In *Penry v. Lynaugh*, 492 U.S. 302 (1989), the Court considered whether it was cruel and unusual punishment for a state to execute a mentally retarded individual. The Court stated in part:

The common law prohibition against punishing "idiots" for their crimes suggests that it may indeed be "cruel and unusual" punishment to execute persons who are profoundly or severely retarded and wholly lacking in the capacity to appreciate the wrongfulness of their actions. Because of the protections afforded by the insanity defense today, such a person is not likely to be convicted or face the prospect of punishment.

*Penry*, 492 U.S. at 333 (emphasis added).

In Idaho, the safeguard the Court relied on in *Penry* does not exist. As a consequence, conviction, imprisonment and or execution of a mentally ill defendant constitute punishments that are cruel and unusual in violation of the Eighth Amendment.

And, "[a]lthough the determination that a severe punishment is excessive may be grounded in a judgment that it is disproportionate to the crime, the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment." *Furman v. Georgia*, 408 U.S. 328, 280 (1972) (Brennan, J., concurring).

Punishing a person for an act committed as a result of mental illness is nothing more than a gratuitous infliction of pain. It serves no penal purpose and is not a deterrent for other people.

The evolving standards of decency in the United States reflect that only four of the fifty states have abolished the insanity defense. The other forty-six States, the federal government and the 100 State Parties to the Rome Statute all recognize that mental illness may constitute a defense to criminal charges in a way other than relating merely to the ability to form the required mental state.

In holding that the Eighth Amendment prohibits the execution of mentally retarded offenders, the Court looked to define evolving standards of decency and contemporary values by looking to objective factors and stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (quoting *Penry*, supra, 492 U.S. at 331).

Certainly, the forty-six states, the federal government and the 100 State Parties to the Rome Statute that recognize an insanity defense evidence both a national consensus and an international consensus that sentencing a man to death for an act committed as a result of mental illness is not in comport with the evolving standards of decency that mark the progress of a maturing society.

Because the abolishment of the insanity defense in Idaho is inconsistent with the current, the evolving and the historical morals and laws of the United States and most other countries of the world, that abolishment, as reflected in I.C. §18-207(1), and concomitant imprisonment of the mentally ill is cruel and unusual and violates the Eighth Amendment. *Atkins, supra; Simmons, supra; see also, Robinson v. California*, 370 U.S. 660 (1962) (punishment cannot be inflicted on the basis of a physical or mental condition of a person).

Reports indicate that Mr. Takhsilov was under the influence of alcohol and illegal drugs on the night in question, exacerbating his mental illness. Therefore, his mental illness was a significant factor in the alleged conduct in this case. Based upon this fact, and his long history of mental illness, Mr. Takhsilov asserts that his imprisonment in this case violates the Eighth Amendment to the U.S. Constitution as cruel and unusual punishment.

**B. Trial Counsel Was Ineffective For Failing to Request a Mental Health Evaluation Under I.C. § 18-211**

Mr. Takhsilov suffers from chronic mental illness. Pursuant to an evaluation under I.C. § 18-211, he was found incompetent to proceed on March 13, 2012. After a short stay at the Idaho State Hospital, Mr. Takhsilov was deemed competent to proceed and returned to court on June 11, 2012. Mr. Takhsilov reports that prior to the entry of his guilty plea on March 5, 2013, he began hearing voices and was suffering greatly from his mental illness, deeming him once again incompetent. Mr. Takhsilov asserts that trial counsel was ineffective for failing to request another evaluation under I.C. § 18-211. He claims that because his symptoms returned prior to the entry of his guilty plea, that he was not competent to enter his guilty plea on March 5, 2013. He asserts that trial counsel should have requested another competency evaluation to during his fitness to proceed, and that had an evaluation been completed, he would have been deemed incompetent once again. Mr. Takhsilov contends that his counsel's performance was deficient under *Strickland*, and prejudiced his right to the effective assistance of counsel.

**C. Trial Counsel Was Ineffective For Failing to Advise Mr. Takhsilov of His Right to Appeal**

Mr. Takhsilov asserts that trial counsel failed to advise him of his right to appeal. Due to the lack of such advisement, Mr. Takhsilov did not know that he could reserve his right to appeal the denial of the motion to suppress in this case. Thus, on March 5, 2013, when he entered his guilty plea, he did not request nor did counsel advise him that he could request a conditional plea in which he reserved the right to appeal the denial of the motion to suppress.

The failure to file an appeal on behalf of a client who makes such a request, is per se ineffective assistance of counsel. *Flores v. State*, 104 Idaho 191 (Ct.App. 1983). Mr. Takhsilov didn't understand that he could even make such a request, thus the failure to even advise him of such a right is ineffective assistance of counsel.

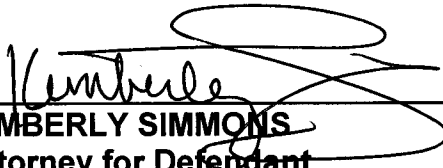
**IV. PRAYERS FOR RELIEF**

**WHEREFORE**, the Petitioner, Alik G. Takhsilov, respectfully prays this Honorable Court:

- A. To allow civil discovery pursuant to the Idaho Rules of Civil Procedure and Idaho Criminal Rule 57 (b);

- B. For an evidentiary hearing on the merit of the petition; and
- C. For such other, further relief as, to the Court, seems just and equitable.

DATED this 14<sup>th</sup> day of July 2014.

  
KIMBERLY SIMMONS  
Attorney for Defendant



**VERIFICATION BY PETITIONER**

I declare under penalty of perjury pursuant to the law of the state of Idaho that the foregoing petition is correct and that the matters and allegations therein set forth are true. This declaration is made pursuant to IDAHO CODE § 9-1406 and ICR 2.1.



---

**ALIK G. TAKHSILOV**  
Petitioner

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 18 day of July 2014, I mailed (served) a true and correct copy of the within instrument to:

**Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail**

  
\_\_\_\_\_  
KATIE VAN VORHIS

*Handwritten notes:*  
Kathy / Ania  
11/1/14  
cg

A.M. \_\_\_\_\_ FILED P.M. 1:40

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**

**JUL 18 2014**

**CHRISTOPHER D. RICH, Clerk**  
**by KATRINA THIESSEN**  
**DEPUTY**

**KIMBERLY J. SIMMONS, ISB #6909**  
**Deputy Public Defender**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7419**

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

**ALIK G. TAKHSILOV,** )  
 )  
**Petitioner,** )  
 )  
**vs.** )  
 )  
**STATE OF IDAHO,** )  
 )  
**Respondent.** )

---

**Case No. CV-PC-2014-7192**

**AFFIDAVIT IN SUPPORT OF**  
**AMENDED PETITION FOR POST-**  
**CONVICTION RELIEF**


I, ALIK G. TAKHSILOV, hereby attest to the following:

1. I am over the age of 18 years old.
2. I retained Mr. George Patterson to defend me in Ada County Case No. CR-FE-2012-1742 in October of 2012.
3. Mr. Patterson never informed me that I had a right to appeal the denial of the motion to suppress, my judgment or my sentence.
4. During the time after my stay at Idaho State Hospital-South, and prior to the entry of my guilty plea, I was suffering from the symptoms of my mental illness. I did not understand what was going on in my case.

*Handwritten initials:* TR

I declare under penalty of perjury pursuant to the law of the state of Idaho that the foregoing is correct. This declaration is made pursuant to IDAHO CODE § 9-1406 and ICR 2.1.

DATED, this 18<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
ALIK G. TAKHSILOV

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18 day of July 2014, I mailed a true and correct copy of the foregoing to Brett Judd, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.



\_\_\_\_\_  
Katie Van Vorhis

JUL 30 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

**Anna Meyer**

**From:** Kimberly Simmons  
**Sent:** Wednesday, July 30, 2014 04:11 PM  
**To:** Judge Melissa Moody; Brett Judd  
**Cc:** Anna Meyer  
**Subject:** RE: Alik G. Takhsilov CV PC 2014-07192

He does not need to be transported. Thank you,  
Kimberly

Kimberly J. Simmons  
Deputy Ada County Public Defender

---

**From:** Judge Melissa Moody  
**Sent:** Wednesday, July 30, 2014 3:49 PM  
**To:** Kimberly Simmons; Brett Judd  
**Cc:** Anna Meyer  
**Subject:** Alik G. Takhsilov CV PC 2014-07192

Kimberly,  
I am not going to have Mr. Takhsilov transported for the hearing on 8/4, unless you need him there for some reason. It is a hearing on your motion for discovery on the post-conviction case. Please let me know if you do need him there.  
Thank you,  
Melissa

AMM

Time	Speaker	Note
10:26:38 AM	Judge	<b>calls e: CV-PC-2014-07192 - Alik G Takhsilov, Plaintiff vs State Of Idaho, Defendant</b>
10:26:54 AM	State Attorney	Mr. Judd present
10:27:11 AM	Defense Attorney	Ms. Simmons defd not present
10:28:07 AM	Judge	reviews the petition, the defendant has the right for evidentiary hearing on appeal issues, would dismiss all other issues
10:29:14 AM	State Attorney	would prefer to have a limited hearing, would speak to office
10:29:35 AM	Judge	comments federal habeas, would like the respondent to have evidentiary hearing on all issues. but for appealing purposes, it's better for that
10:30:47 AM	State Attorney	would like to have the shorter hearing, would like to move for summary dismissal,
10:31:41 AM	Judge	comments regarding the sentence that was affirmed, have not issue a notice of intent to dismiss
10:32:28 AM	Defense Attorney	responds, would be seeking an addendum to disc 1/17/13, & 2/19/13, response was filed, like a copy of the suppression hearing, and transcript of the guilty plea, like to see the video, and in support of claims in the amended petition would like to leave for conduct discovery, and would like to conduct a dispo, request from the court to reserve a right to perform more discovery if needed.
10:37:57 AM	Judge	addresses on the list that counsel is seeking, Mr. Judd please work to give any and all docs to Ms. Simmons, will not allow Mr. Patterson disposed on discovery,
10:40:15 AM	Defense Attorney	would like a time frame
10:40:29 AM	Judge	set cut off dates
10:41:22 AM	State Attorney	only transcript that I have is the Pre-Lim hearing, all other hearing transcripts I don't have.
10:41:59 AM	Judge	9/5 for discovery/transcripts,
10:42:51 AM	Defense Attorney	transcripts of the the suppression hearing is not part of the clerks record,
10:43:25 AM	Judge	listen to the audio, if not I will create one for you.
10:44:14 AM	Judge	give you 11/21, Mr. Judd 9/5 cut off date
10:46:12 AM	Judge	<b>1/12 @ 8:30 for evidentiary hearing, status on 1/5 @ 9 am</b>
10:46:49 AM	Adjourn.	

Moody Anna

8/13/2014

SCA

NO. 10 FILED  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

AUG 08 2014

CHRISTOPHER D. RICH, Clerk  
By MAURA OLSON  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Brett B. Judd**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

ALIK TAKHSILOV,	)	
	)	Case No. CV-PC-2014-7192
Petitioner,	)	
	)	ANSWER TO THE AMENDED
vs.	)	PETITION FOR POST-
	)	CONVICTION RELIEF
THE STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

The State of Idaho, by and through the undersigned Deputy Ada County Prosecuting Attorney, answers the Amended Petition for Post-Conviction Relief incorporating all of the answers to the previous claims and using the numbering scheme of the defendant's petition as follows:

- I. A. The state lacks sufficient information upon which to base an answer and so denies the claim.

*W*



B. The state admits that the Judgment of Conviction was entered on May 7, 2013, by the Honorable Judge Melissa Moody, but denies that the sentence was pronounced on May 7, 2013.

C. The state admits this allegation.

D. The state admits that Mr. Takhsilov filed a Motion to Suppress on December 20, 2012, and that the Honorable Judge Melissa Moody denied that motion on February 22, 2013. In as much that this sentence could be construed to suggest that the motion and argument were heard on February 22, 2013, the state denies that.

E. The state admits that the Judgment of Conviction was entered with the sentence listed on May 7, 2013, but the sentence was pronounced earlier than that.

F. The state admits this allegation.

G. The state admits this allegation.

H. The state admits this allegation.

I. The state admits this allegation.

J. The state admits this allegation.

K. The state lacks sufficient information upon which to base an answer and so denies the claim, reserving the right to amend this answer upon further investigation.

II. The state denies this allegation.

III. The state denies this allegation.

A. The state denies this allegation.

B. The state denies this allegation.

C. The state denies this allegation.

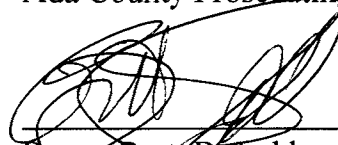
**The State of Idaho asserts the following affirmative defenses to the Petition:**

1. Petitioner's claims that could have been raised in a direct appeal are barred. I.C. §19-4901(b). A UPCPA petition is not a substitute for a direct appeal. In the instant case, the appeal of the petitioner did pursue these issues on direct appeal.
2. Petition for post-conviction relief raises no genuine issue of material fact. I.C. § 19-4906(b), (c). They are not supported by admissible evidence and are mere bare allegations.
3. The Petition fails to allege sufficient facts that would warrant a conclusion that counsel was deficient or that any deficiency prejudiced defendant.
4. Petitioner has failed to show that counsel was constitutionally deficient or that any deficiency prejudiced him in these proceedings.

Having answered Petitioner's claim, the State of Idaho asks the Court to deny any relief to Petitioner.

**DATED** this 7 day of August, 2014.

**GREG H. BOWER**  
Ada County Prosecuting Attorney



By: Brett B. Judd  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8 day of August 2014, I caused to be served, a true and correct copy of the foregoing ANSWER upon the individual(s) named below in the manner noted:

Name and address: Kimberly Simmons, Ada County Public Defender

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By Hand Delivering said document to defense counsel.
- By emailing a copy of said document to defense counsel.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_



Laurel Thomas  
Legal Assistant

Handy  
9/20/14  
09

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2/9

SEP 05 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIOAK  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Brett B. Judd**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

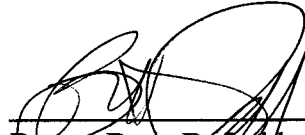
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALIK TAKHSILOV,	)	
	)	Case No. CV-PC-2014-7192
Petitioner,	)	
	)	MOTION FOR EXTENSION OF
vs.	)	TIME TO FILE MOTION FOR
	)	SUMMARY DISMISSAL
THE STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

The State of Idaho, by and through the undersigned Deputy Ada County Prosecuting Attorney, moves this Court to enter an Order extending the deadline for the State to file its Motion for Summary Dismissal from September 5, 2014, to September 29, 2014, or at such time the Court deems appropriate. The State is requesting this extension to allow it more time to conduct research regarding the response.

DATED this 5 day of September, 2014.

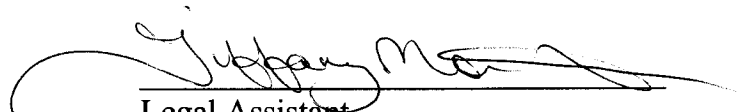
**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
By: Brett B. Tadd  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 5<sup>th</sup> day of September, 2014, I caused to be served a true and correct copy of the foregoing Motion for Extension of Time upon Kimberly Simmons, Deputy Ada County Public Defender, 200 W. Front St., Room 1107, Boise, ID 83702 in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
Legal Assistant

RECEIVED

SEP 05 2014

Ada County Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *116*

SEP 10 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

**GREG H. BOWER**

Ada County Prosecuting Attorney

**Brett B. Judd**

Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

ALIK TAKHSILOV,	)	
	)	Case No. CV-PC-2014-7192
Petitioner,	)	
	)	<b>ORDER FOR EXTENSION OF TIME</b>
vs.	)	<b>TO FILE MOTION FOR SUMMARY</b>
	)	<b>DISMISSAL</b>
THE STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

The State's Motion for Extension of Time to File Motion for Summary Dismissal having come before this Court, and good cause appearing;

**IT IS HEREBY ORDERED** that the time for filing a Motion for Summary Dismissal be extended to the 29 day of September, 2014.

DATED this 8<sup>th</sup> day of Sept. 2014.

*Di. Ong*  
\_\_\_\_\_  
Judge *MOODY*

*CU'd PA/PD 9/10/14 AM*

Moody  
Anna  
9-13-14  
11

SEP 16 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Brett B. Judd**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

ALIK TAKHSILOV, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
THE STATE OF IDAHO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. CV PC 2014 07192  
**MOTION FOR SUMMARY  
DISMISSAL**

The State of Idaho, by and through the undersigned Deputy Ada County Prosecuting Attorney, moves this Court for its order dismissing the defendant's request for Post-Conviction Relief based on the arguments below.

## Applicable Legal Standards

### A. General Standards

An application for post-conviction relief initiates a proceeding that is civil in nature. State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); Clark v. State, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); Murray v. State, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App.1992). An application for post-conviction relief differs from a complaint in an ordinary civil action, however, an application must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Martinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 491 (Ct. App. 1995). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; Russell v. State, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990).

The post-conviction petitioner must make factual allegations showing each essential element of the claim, and a showing of admissible evidence must support those factual allegations. Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 651 (Ct. App. 1982); Stone v. State, 108 Idaho 822, 824, 702 P.2d 860, 862 (Ct. App. 1985). The district court may take judicial notice of the record of the underlying criminal case. Hays v. State, 113 Idaho 736, 739, 745 P.2d 758, 761 (Ct. App. 1987), *aff'd* 115 Idaho 315, 766 P.2d 785 (1988), *overruled on other grounds* State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992).



B. Legal Standard Applicable To Taksilov's Burden on Cruel and Unusual Punishment

Idaho Code 19-4901(b) states that “[a]ny issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings...” The Idaho Court of Appeals has held that the challenge to “a sentence based on cruel and unusual punishment grounds could be raised for the first time on direct appeal. State v. Jensen, 138 Idaho 941, 946, 71 P.3d 1088, 1093 (Ct. App. 2003). As a result of the decision in Jensen, a petitioner is precluded from challenging a sentence based on the allegation that it is a cruel and unusual sentence because it could be raised on direct appeal. Knutsen v. State, 144 Idaho 433, 438, 163 P.3d 222, 227 (Ct. App. 2007). Moreover, if a sentence is appealed as being excessive, the defendant is prohibited from raising the issue post-conviction because it is barred by res judicata. Id. at 440, 230. Thus, a defendant is prohibited from requesting post-conviction relief based on a claim of cruel and unusual punishment because it should be raised on direct appeal and is barred by res judicata when a defendant has appealed his sentence.

C. Legal Standards Applicable To Taksilov's Burden Of Making Out A Prima Facie Case Of Ineffective Assistance of Counsel

To prevail on an ineffective assistance of counsel claim, the petitioner must demonstrate both that (a) his counsel's performance fell below an objective standard of reasonableness and (b) there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); LaBelle v. State, 130 Idaho 115, 118, 937 P.2d 427, 430 (Ct. App. 1997). “Because of the distorting effects of hindsight in reconstructing the circumstances of counsel's challenged conduct, there is a strong presumption that counsel's performance was within the wide range of reasonable professional assistance -- that is, ‘sound trial strategy.’” Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989) (quoting Strickland, 466 U.S. at 689-90); Aragon v. State, 114 Idaho 758, 760, 760 P.2d

1174, 1176 (1988). A petitioner must overcome a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment” to establish that counsel’s performance was “outside the wide range of professionally competent assistance.” Claibourne v. Lewis, 64 F.3d 1373, 1377 (9th Cir.1995) (quoting, Strickland, 466 U.S. at 690).

Thus, the first element – deficient performance – “requires a showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. The second element – prejudice – requires a showing that counsel’s deficient performance actually had an adverse effect on his defense; i.e., but for counsel’s deficient performance, there was a reasonable probability the outcome of the trial would have been different. Strickland, 466 U.S. at 693; Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

The contention that an attorney was ineffective for failing to preserve an issue for appeal by entering a conditional guilty plea is subject to this same analysis. Banuelos v. Idaho, 127 Idaho 860, 865, 908 P.2d 162, 167 (Ct.App. 1995). This is differently than failure to file an appeal because a defendant has a right to an appeal, a defendant does not have a right to entering a conditional guilty plea. Id. In summary, “[a]bsent a showing that there existed a meritorious appellate issue present, an attorney is not deficient for having made no effort to reserve a right to appeal a ruling made prior to a guilty plea.” Id. at 866, 168. Therefore, the petitioner would have to prove the merit of an appeal to survive summary dismissal.

Petitioner has the burden of proving “by a preponderance of the evidence that he was incompetent when he entered his guilty plea,” to be successful on a claim that counsel was ineffective for not requesting a mental health evaluation. Ridgley v. State, 148 Idaho 671, 678, 227 P.3d 925, 932 (2010). Furthermore, the Idaho Supreme Court in Ridgley explained that for the petitioner to meet his burden on this issue, the opinion about the petitioner’s competency to enter a plea must be made by an expert. Id. at 678-

679, 932-933. Thus, in order to survive a motion for summary dismissal a petitioner must have an opinion from an expert that he was incompetent during the case or he cannot meet his burden un Strickland. In other words, the petitioner's bare allegation of incompetence at the time is not enough to go forward to a hearing on ineffective assistance of counsel.

D. Legal Standards Applicable To Summary Dismissal Under Idaho Code § 19-4906(c)

Idaho Code Section 19-4906(c) authorizes summary disposition of an application for post-conviction relief. Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. State v. LePage, 138 Idaho 803, 806, 69 P.3d 1064, 1067 (Ct. App. 2003). I.C. § 19-4906(c) provides:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a genuine issue of material fact is presented, an evidentiary hearing must be conducted. Gonzales v. State, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); Hoover v. State, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988); Ramirez v. State, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987).

Conversely, the "application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal." Goodwin v. State, 138 Idaho 269, 272, 61 P.3d 626, 629 (Ct. App. 2002) *review denied* (2003); LePage, 138 Idaho at 807, 69 P.3d at 1068 (citing Roman 125 Idaho at 647, 873 P.2d at 901). Follinus v. State, 127 Idaho 897, 908 P.2d 590 (Ct. App. 1995) (Follinus's claim that his attorney had been ineffective in failing to obtain a *Franks* hearing to contest

the veracity of statements by the search warrant affiant was properly summarily dismissed where the court found that trial counsel did obtain, in effect, a *Franks* hearing at the suppression hearing); Stone v. State, 108 Idaho 822, 826, 702 P.2d 860, 864 (Ct. App. 1985) (record of extradition proceedings disproved applicant's claim that he was denied right to counsel in those proceedings). Allegations are insufficient for the grant of relief when they do not justify relief as a matter of law. Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975); Remington v. State, 127 Idaho 443, 446-47 901 P.2d 1344, 1347-48 (Ct. App. 1995); Dunlap v. State, 126 Idaho 901, 906, 894 P.2d 134, 139 (Ct. App. 1995) (police affidavit was sufficient to support issuance of search warrant, and defense attorney therefore was not deficient in failing to move to suppress evidence on the ground that warrant was illegally issued).

Bare or conclusory allegations, unsubstantiated by any fact, are inadequate to entitle a petitioner to an evidentiary hearing. Roman, 125 Idaho at 647, 873 P.2d at 901; Baruth v. Gardner, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986); Stone, 108 Idaho at 826, 702 P.2d at 864. If a petitioner fails to present evidence establishing an essential element on which he bears the burden of proof, summary dismissal is appropriate. Mata v. State, 124 Idaho 588, 592, 861 P.2d 1253, 1257 (Ct. App. 1993). Where petitioner's affidavits are based upon hearsay rather than personal knowledge, summary disposition without an evidentiary hearing is appropriate. Ivey v. State, 123 Idaho 77, 844 P.2d 706 (1993).

### Argument

Here, the petitioner is claiming that he is entitled to relief based on his sentence constituting cruel and unusual punishment. In this case, the petitioner is prohibited from raising that claim based on two grounds. First, it is prohibited by Idaho Code 19-4901(b) because it is an issue that should have been raised on direct appeal. Second, this issue is precluded from being raised in post-conviction relief because the petitioner appealed his

sentence already. Accordingly, the claim of cruel and unusual punishment cannot be raised in a post-conviction proceeding and the Court should summarily dismiss this claim.

In this case, the petitioner has not alleged sufficient facts to survive summary dismissal on a claim that counsel was ineffective for failing to request an evaluation pursuant to Idaho Code § 18-211. As the petitioner mentions on page eight of the amended petition, the defendant was given an evaluation pursuant to Idaho Code 18-211, treated, and declared competent to assist in his defense. In his affidavit, petitioner is now making an unsupported assertion that he was not competent. The petitioner appears to have presented the same argument that the Idaho Supreme Court deemed insufficient in Ridgely. Here, just as in Ridgely, there is no opinion from an expert regarding the petitioner's mental health after his return from the State Hospital. The Court is left with the petitioner's bare assertion of incompetence. That assertion alone is not admissible because there is no evidence to suggest the petitioner is a mental health professional. Thus, this claim should be summarily dismissed because it is not supported by any admissible evidence.

Additionally, petitioner is not entitled to relief based on the denial of the motion to suppress not being preserved for appeal because even assuming arguendo that counsel fell below the standard of practice there has not even been an allegation that "there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different." In the affidavit in support of the petition, the petitioner claims that Mr. Patterson never informed him about his right to appeal the denial of his motion to suppress or his sentence. Interestingly, Mr. Takhsilov did appeal his sentence. But there is no evidence before the Court, or even an allegation, that the petitioner would have been successful on an appeal of the Court's denial of his motion to suppress. As the Idaho Court of Appeals made clear in Banuelos, the defendant is required to make such a showing to survive summary dismissal.

Petitioner cites to Flores and claims that not appealing the denial of the motion to suppress is per se ineffective assistance. Flores is inapplicable here. There is nothing in

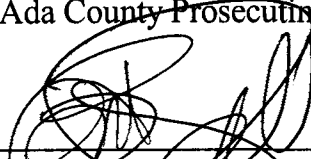
the record to show that the petitioner requested an appeal. Flores is limited to a failure to file an appeal once it has been requested by a defendant. In fact, in Banuelos, the Idaho Court of Appeals went to great lengths to distinguish not filing an appeal after it has been requested from the scenario where a motion to suppress was denied and not appealed. In this case, the petitioner has not presented or even alleged that the petitioner would have succeeded on an appeal of the motion to suppress as Banuelos requires. Thus, the claim must be dismissed by the Court.

**Conclusion**

The State respectfully requests that the Court grant its motion and dismiss the petition for post-conviction relief.

DATED this 15 day of September, 2014.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

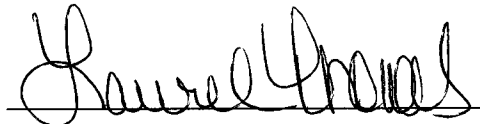
  
By: Brett B. Judd  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15 day of September 2014, I caused to be served, a true and correct copy of the foregoing Motion for Summary Dismissal upon the individual(s) named below in the manner noted:

Name and address: Kimberly Simmons, Ada County Public Defender

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By Hand Delivering said document to defense counsel.
- By emailing a copy of said document to defense counsel.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_



Legal Assistant

SEP 30 2014

CHRISTOPHER D. RICH, Clerk  
By KIERSTEN HOUST  
DEPUTY

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

ALIK TAKHSILOV,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

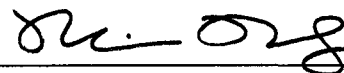
Case No. CV PC 2014-07192

NOTICE OF INTENT TO DISMISS

The Court hereby gives Petitioner notice that it intends to dismiss Petitioner's July 18, 2014 Amended Petition for Post-Conviction relief on the grounds stated in Respondent's Motion for Summary Dismissal filed on September 16, 2014.

Petitioner is hereby granted twenty (20) days to reply to this proposed dismissal. In light of the reply or on default thereof, the Court may dismiss the Petition.

DATED this 30th day of September 2014.



Melissa Moody  
District Judge





CERTIFICATE OF MAILING

I hereby certify that on this 30<sup>th</sup> day of September, 2014, I mailed (served) a

true and correct copy of the within instrument to:

Brett Judd  
ADA COUNTY PROSECUTOR  
INTERDEPARTMENTAL MAIL

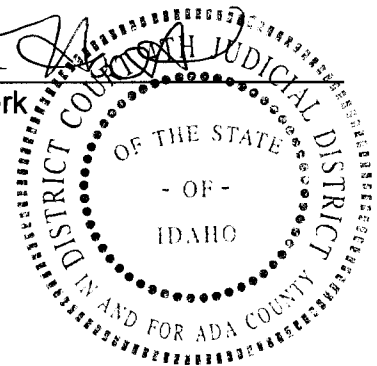
- U.S. Mail, Postage Prepaid
- Hand Delivered
- Electronic Mail
- Facsimile

Kimberly Simmons  
ADA COUNTY PUBLIC DEFENDER  
INTERDEPARTMENTAL MAIL

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Electronic Mail
- Facsimile

CHRISTOPHER D. RICH  
Clerk of the District Court

By: *Christopher D. Rich*  
Deputy Court Clerk



Moody  
Anna  
10-10-14  
21

NO. 1151 FILED  
A.M. 11:51 P.M.

OCT 17 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

ADA COUNTY PUBLIC DEFENDER  
Attorney for Petitioner

Nicole Owens  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

ALIK G. TAKHSILOV,

Petitioner,

vs.

STATE OF IDAHO,

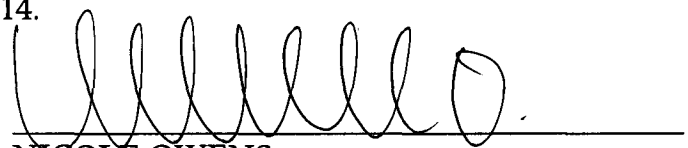
Respondent.

Case No. CV-PC-2014-07192

**MOTION TO EXTEND TIME FOR  
FILING RESPONSE TO NOTICE OF  
INTENT TO DISMISS**

COMES NOW, NICOLE OWENS of the Ada County Public Defender's Office, court-appointed counsel for the petitioner, ALIK G. TAKHSILOV, and hereby moves this Court for an order granting an extension the time for filing Petitioner's Response to the Notice of Intent to Dismiss. Petitioner's counsel is requesting this extension to allow her more time to evaluate the issues as she is newly assigned to this case.

DATED this 17 day of October 2014.

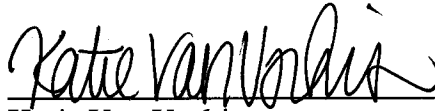


NICOLE OWENS  
Attorney for Defendant



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 17 day of October 2014, I mailed a true and correct copy of the foregoing to Brett Judd, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.



\_\_\_\_\_  
Katie Van Vorhis

OCT 27 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

RECEIVED

OCT 17 2014

Ada County Clerk

ADA COUNTY PUBLIC DEFENDER  
Attorney for Petitioner

Nicole Owens  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

ALIK G. TAKHSILOV,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.


Case No. CV-PC-2014-07192

ORDER GRANTING EXTENSION OF  
TIME FOR FILING RESPONSE TO  
NOTICE OF INTENT TO DISMISS

The Petitioner's Motion to Extend Time for Filing Response to Notice of Intent to Dismiss having come before this Court, and good cause appearing;

IT IS HEREBY ORDERED that the time for filing a Response to Notice of Intent to Dismiss shall be extended to November 26, 2014.

DATED this 23<sup>rd</sup> day of October 2014.

  
MELISSA MOODY  
District Judge

#12

NOV 28 2014

CHRISTOPHER D. RICH, Clerk  
By KIERSTEN HOUST  
DEPUTY

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

ALIK G. TAKHSILOV,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV PC 2014-07192

ORDER DISMISSING AMENDED  
PETITION FOR POST-  
CONVICTION RELIEF

Petitioner's July 18, 2014 Amended Petition for Post-Conviction Relief is hereby dismissed for the reasons stated in Respondent's September 16, 2014 Motion for Summary Dismissal.

IT IS SO ORDERED.

DATED this 28<sup>th</sup> day of November 2014.



Melissa Moody  
District Judge



CERTIFICATE OF MAILING

I hereby certify that on this 20<sup>th</sup> day of November 2014, I mailed (served) a

true and correct copy of the within instrument to:

BRETT B. JUDD  
ADA COUNTY PROSECUTOR'S OFFICE  
200 W FRONT ST, RM 3191  
BOISE, ID 83702

- U.S. Mail, Postage Prepaid
- Interdepartmental Mail
- Electronic Mail
- Facsimile

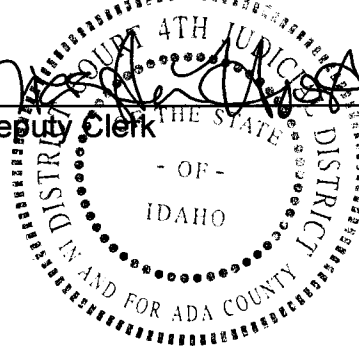
NICOLE OWENS  
ADA COUNTY PUBLIC DEFENDER'S OFFICE  
200 W FRONT ST, STE 1107  
BOISE, ID 83702

- U.S. Mail, Postage Prepaid
- Interdepartmental Mail
- Electronic Mail
- Facsimile

CHRISTOPHER D. RICH  
Clerk of the District Court

By: \_\_\_\_\_

Deputy Clerk



DEC 09 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

ADA COUNTY PUBLIC DEFENDER  
Attorney for Petitioner-Appellant

Nicole Owens  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

ALIK G. TAKHSILOV,  
Petitioner-Appellant,

vs.

STATE OF IDAHO,  
Respondent-Respondent.

Case No. CV-PC-2014-07192

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE CLERK  
OF THE ABOVE-ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

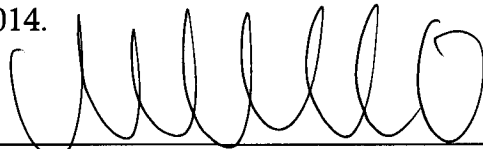
- 1) The above-named Appellant appeals against the above-named Respondent to the Idaho Supreme Court from the final decision and order entered against him in the above-entitled action on November 28, 2014, the Honorable Melissa Moody, District Judge, presiding.
- 2) That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to I.A.R. 11(c)(1-10).
- 3) A preliminary statement of the issues on appeal, which the Appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal is:
  - a) Did the district court err by dismissing Petitioner's Petition for Post-Conviction Relief?

4) Clerk's Record. The Appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(1). In addition to those documents automatically included under I.A.R. 28(b)(1), the Appellant also requests that any briefs, statements or affidavits considered by the court, and memorandum opinions or decisions of the court be included in the Clerk's Record.

5) I certify:

- a) That a copy of this Notice of Appeal has been served on the Court Reporter(s) mentioned in paragraph 4 above;
- b) That the Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is indigent (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e));
- c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§ 31-3220, 31-3220A, I.A.R. 23(a)(10));
- d) That Ada County will be responsible for paying for the reporter's transcript(s), as the client is indigent (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e)); and
- e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 9 day of December 2014.



---

NICOLE OWENS  
Attorney for Petitioner-Appellant



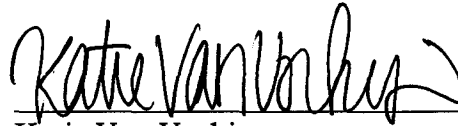
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 9 day of December 2014, I mailed (served) a true and correct copy of the within instrument to:

Idaho Attorney General  
Criminal Division  
Joe R. Williams Bldg., 4<sup>th</sup> Flr.  
Statehouse Mail

Idaho State Appellate Public Defender  
3050 North Lake Harbor Lane, Suite 100  
Boise, Idaho 83703

Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail



Katie Van Vorhis

RECEIVED

DEC 9 2014

ADA COUNTY CLERK

NO. \_\_\_\_\_  
L.M. \_\_\_\_\_ 440

DEC 11 2014

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

ADA COUNTY PUBLIC DEFENDER  
Attorney for Petitioner-Appellant

Nicole Owens  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

ALIK G. TAKHSILOV,  
  
Petitioner-Appellant,  
  
vs.  
  
STATE OF IDAHO,  
  
Respondent-Respondent.

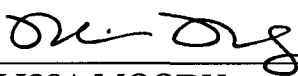
Case No. CV-PC-2014-07192

ORDER APPOINTING STATE  
APPELLATE PUBLIC DEFENDER  
ON DIRECT APPEAL

The Petitioner has elected to pursue a direct appeal in the above-entitled matter. The Petitioner being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, the Court finds that, under these circumstances, appointment of appellate counsel is justified. The Idaho State Appellate Public Defender shall be appointed to represent the above-named Petitioner in all matters pertaining to the direct appeal.

IT IS SO ORDERED.

DATED this 10<sup>th</sup> day of December 2014.

  
\_\_\_\_\_  
MELISSA MOODY  
District Judge

AW

**CERTIFICATE OF MAILING**

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have mailed one copy of the Order Appointing State Appellate Public Defender on Direct Appeal as notice pursuant to the Idaho Rules to each of the parties of record in this case in envelopes addressed as follows:

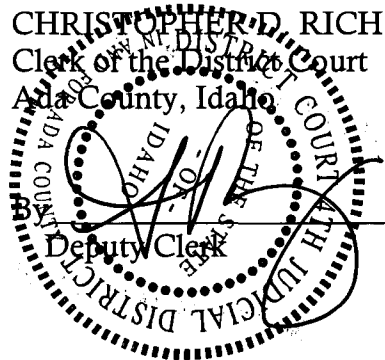
Idaho Attorney General  
Criminal Division  
Joe R. Williams Bldg., 4<sup>th</sup> Flr.  
Statehouse Mail

Idaho Appellate Public Defender  
3050 North Lake Harbor Lane, Suite 100  
Boise, Idaho 83703

Brett Judd  
Ada County Prosecutor's Office  
Interdepartmental Mail

Ada County Public Defender's Office  
Attn: Katie Van Vorhis  
Interdepartmental Mail

Date: 12/11/2014



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

ALIK G. TAKHSILOV,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42780

CERTIFICATE OF EXHIBITS

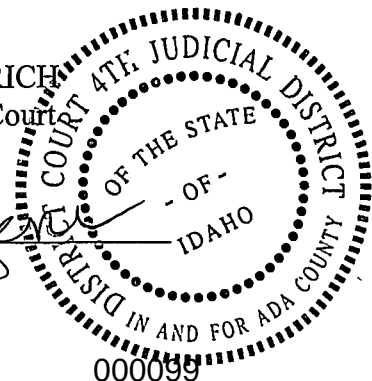
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 11th day of February, 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By KWegener  
Deputy Clerk



CERTIFICATE OF EXHIBITS

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

ALIK G. TAKHSILOV,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42780

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

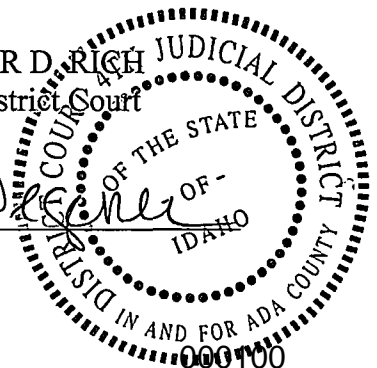
ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: FEB 11 2015

CHRISTOPHER D. RICH  
Clerk of the District Court

By KW Wasden  
Deputy Clerk



CERTIFICATE OF SERVICE

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

ALIK G. TAKHSILOV,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42780

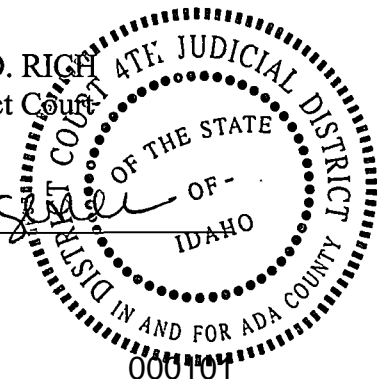
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 9th day of December, 2014.

CHRISTOPHER D. RICH  
Clerk of the District Court

By KWesley  
Deputy Clerk



CERTIFICATE TO RECORD