2-23-2012

Grant v. State Clerk's Record v. 1 Dckt. 39207

SUPREME COURT
OF THE
STATE OF IDAHO

WOODROW JOHN GRANT

Petitioner-Appellant

vs. LAW CLERK

STATE OF IDAHO

Respondent

Honorable Robert C. Naftz **District Judge**

Appealed from the District Court of the Sixth **Judicial District of the State of Idaho, in and for** Bannock **County.**

Molly Huskey

State Appellate Public Defender

Attorney X **For Appellant** X

Lawrence G. Wasden

Idaho Attorney General

Attorney X **For Respondent** X

Filed this _____ **day of** _____

2008

FEB 3 2012

Clerk

Deputy

39207

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW JOHN GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent,	)	Supreme Court No. 39207-2011

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock.

Before **HONORABLE Judge Robert C. Naftz** District Judge.

For Appellant:

Molly Huskey
State Appellate Public Defender
P.O. Box 83720
Boise, Idaho 83720-0005

For Respondent:

Lawrence G. Wasden
Idaho Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

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Woodrow John Grant, Plaintiff vs State Of Idaho, Defendant

Woodrow John Grant, Plaintiff vs State Of Idaho, Defendant

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2/13/2011	LOCT	NOELIA	SURPEME COURT APPEAL; diane	Robert C Naftz
2/14/2011		CAMILLE	Petition for Post Conviction Relief w/ Affidavit w / support: pro se	Robert C Naftz
		CAMILLE	Motion and Affidavit in support for appointment of counsel ; pro se	Robert C Naftz
		CAMILLE	Motion and Affidavit for permission to proceed on partial payment of ocurt fees (prisoner) pro se	Robert C Naftz
2/23/2011	NCPC	NOELIA	New Case Filed-Post Conviction Relief	Robert C Naftz
3/4/2011		CAMILLE	Order extending time for filing an Answer; s/ Judge Naftz 2-25-2011	Robert C Naftz
3/17/2011		CAMILLE	Notice of intent to dismiss; s/ Judge Naftz 3-17-2011	Robert C Naftz
4/4/2011		CAMILLE	Petitioners Response to Courts Notice of Intent to dismiss; pro se	Robert C Naftz
		CAMILLE	Motion to Amend Petition for Post Conviction Relief: pro se	Robert C Naftz
5/5/2011		CAMILLE	Motion for leave to Amend Petition for Post Conviction Relief; pro se	Robert C Naftz
5/11/2011		CAMILLE	Order Dismissing Petition for Post conviction relief; court hereby Dismisses the Petition for Post Conviction Relief: s/ Judge Naftz 5-10-2011	Robert C Naftz
5/13/2011	DSBT	CAMILLE	Dismissed Before Trial Or Hearing	Robert C Naftz
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		CAMILLE	Order Denying Motion for leave to Amend Petition for Post Conviction Relief; (Court DENIES the Moiton for leave to Amend Petition for Post Conviction Relief) s/ Judge Naftz 5-12-2011	Robert C Naftz
5/27/2011		CAMILLE	Motion to alter or amend or reconsider order dismissing petition for post conviction relief; pro se	Robert C Naftz
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9/21/2011	APSC	DCANO	Appealed To The Supreme Court	Robert C Naftz
	NOTC	DCANO	NOTICE OF APPEAL; Woodrow Grant, pro se	Robert C Naftz
	MOTN	DCANO	MOTION AND AFFIDAVIT IN SUPPORT FOR APPONTMENT OF COUNSEL	Robert C Naftz
	MOTN	DCANO	MOTION AND AFFIDAVIT FOR PERMISSION TO PROCEED ON PARTIAL PAYMENT OF COURT FEES(Prisoner)	Robert C Naftz
9/22/2011	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to SC and Counsel on 9-22-11.	Robert C Naftz

Woodrow John Grant, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
9/29/2011	ORDR	DCANO	ORDER GRANTING MOTION FOR APPOINTMENT OF COUNSEL; Signed by Judge Naftz on 9-26-11 filed on 9-29-11. (Mailed copies to Counsel and SC on 10-19-11)	Robert C Naftz
9/30/2011	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record Due Date Suspended. Reason for Suspension: Suspended for DC Order of Fee Waiver and/or Appointment of Counsel.	Robert C Naftz
10/13/2011	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Certificate received in SC on 10-7-11. Carefully examine the Title and Cert. advise Dist. Court Clerk if any errors or corrections. The Title in the Cert. must appear on all documents filed in SC.	Robert C Naftz
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record Due Date Suspended. Reason for Suspension: Suspended for Dist. Court Order on Fee Waiver and pr Appointment of Cousnel.	Robert C Naftz
10/30/2011	MISC	DCANO	IDAHO SUPREME COURT; Documents received in SC on 10-21-11. Order Appointing State Appellate Public Defender.	Robert C Naftz
11/8/2011	MISC	DCANO	IDAHO SURPEME COURT; Notice of Appeal received in SC on 9-23-11. Docket Number 39207-2011. Clerk's Record to be filed in SC on 12-28-11. (11-23-11 5 weeks prior).	Robert C Naftz
1/18/2012	MISC	DCANO	CLERK'S RECORD RECEIVED IN COURT RECORDS ON 1-18-12.	Robert C Naftz
	MISC	DCANO	Provided a copy of Clerk's Record on Bannock County Prosecuting Attorney's Office Jeanne Hobson on 1-18-12.	Robert C Naftz
	MISC	DCANO	CLERK'S RECORD mailed to Counsel on 1-18-12. Due in Supreme Court on 2-16-12. (Mailed and faxed notice to Klondy on 1-18-12.	Robert C Naftz

Woodrow Grant # 80[redacted]2
I.C.C. - W
P.O. Box 70010
Boise, ID 83707
Prisoner Pro Se

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO, IN AND FOR BANNOCK COUNTY

Woodrow Grant,
Petitioner
vs
State of Idaho
Respondent

Case No. CV-2011-759-PC

Petition for Post-Conviction Relief w/ Affidavit in Support

Comes now, Woodrow Grant, the petitioner, who alleges;

1 Petitioner is incarcerated and is currently housed at the Idaho Correctional Center (I.C.C.) in Boise, ID.

2 The District Court of Idaho, county of Judge Naftz imposed the judgement and sentence

3 Case information is as follows

A. CR-05-10538 Agg. Battery 6-19-06 Plaintiff was sent to the rider program which he successfully completed. Plaintiff was then placed on parole until parole was revoked on or about July 2010.
At that time the Petitioner was told to serve the 4 yrs fixed/10 yr indeterminate and that this sentence would be consecutive to the new charges

B. CR-09-19451 Possession of Methamphetamine, 7-8-10. Petitioner was sentenced to 2 fixed/3 indeterminate to run consecutive to the Agg. Battery charge and concurrent to the Domestic Assult charge.

C. CR-09-19445 - Domestic Assult, 7-8-10

Petitioner was sentenced to 5 yrs fixed/15 yrs indeterminate concurrent to the Possession charge and consecutive to the Agg. Battery charge.

4. Petitioner plead guilty in a plea agreement.

5. Petitioner did not appeal from the judgement of conviction or the imposition of sentence

6 This P.C.R. is based on the following grounds;

A. Ineffective assistance of counsel
B. There is evidence and material facts not previously presented or heard
C. Guilty plea was not knowingly/voluntarily entered as it was induced by promises not kept
D. Guilty plea was not knowingly/voluntarily entered as Petitioner is mentally incompetent due to being bi-polar
E. Sentence imposed is, cruel and unusual as it is excessive in respect to the facts of the case. This violates both the U.S. Constitutional & Idaho Constitution Rights of the Plaintiff

7. Prior to this petition the Petitioner has only filed a Rule 35 and then an appeal on the Rule 35.

8. The ineffective assistance of counsel claims are based on the following:

A. Counsel refused to attempt a change of venue even when counsel was informed that the victim's mother was a secretary of the local police chief
B. Counsel refused to request a change of Judges and did not request Judge Nafte recuse himself when counsel was informed that Judge Nafte had been an attorney representing the Petitioner's brother at an earlier

PCR-2

date and due to the circumstances surrounding that previous case, might be biased

C. Counsel was fully aware of Petitioner's mental health issues, and did not actively pursue the option of the Mental Health Court.

D. Counsel failed to advise, attend, or protect client's interests during the psych-evaluation. Nor did he advise the Petitioner that the Petitioner was not obligated to provide information that would be used against him. This is ineffective assistance of counsel under the ESTRADA case and thus violates the Petitioner's U.S. Constitutional and Idaho Constitutional Rights.

E. Counsel failed to provide the sentencing court with mitigating evidence and evidence conflicting the victim's allegations despite such evidence being available

F. Counsel failed to show that victim's mother used her position as secretary to the local Chief of Police to manipulate the system in such a way as to paint the victim as an innocent w/ no criminal tendencies

G. Counsel did not adequately explain the appeal process to the Petitioner and did not realize that, due to his mental health issues, the Petitioner was unable to make an informed decision as to whether to pursue his appeal options. This caused the Petitioner to lose his chance at appealing the sentence and possibly receiving a lesser sentence

H. Counsel failed to advise, attend, or protect client's interests during the Pre-Sentence Investigation (P.S.I.) The interview was conducted by a biased party and the information garnered was used adversely against the Petitioner. At no time did counsel inform Petitioner that he was not obligated to provide information to be used against him and said rights were gaurantee by the US and Idaho S

PCR-3

Constitutions

I. Since counsel was aware of the Petitioner's mental health issues and addictive behaviors, the attorney should have been cognizant of the Petitioner's bi-polar mood swings and recognized depression driven behaviors such as giving up and not appealing the sentence and conviction.

J. The attorney made false assurances of what the plea bargain would accomplish and what kind of sentence the Plaintiff could expect. The attorney also relayed these assurances to the Petitioners family.

K. Petitioner attempted to rid himself of the court-appointed public defender and get someone else assigned who had the Petitioners best interests in mind.

L. Counsel did not bring up the testimony of the witnesses who supported the Petitioners side nor did counsel have the private investigators findings brought up during the sentencing phase.

9. Petitioner is seeking leave to proceed in Forma Pauperis and is submitting the correct paperwork.

10. Petitioner is requesting appointment of conflict counsel to represent Petitioner in this proceeding.

* Prayer of Relief *

11. Petitioner seeks the following relief

A. Be allowed to file an Appeal of the conviction and sentence
B. Be resentenced to a lesser sentence
C. Have all three sentences run concurrently.
D. Remand entire case to the Mental Health Court.

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12 Petitioner swears that all statements in the above entitled P.C.R. are true and correct to the best of his knowledge and belief.

*Woodrow Grant
WOODROW GRANT

Dated this 9 of ~~January~~ Febuary, 2011

* AFFIDAVIT IN SUPPORT *

STATE OF IDAHO } S.S.
COUNTY OF ADA }

I, Woodrow Grant, being duly sworn on oath, deposes and says;

1. I am mentally competent to make this affidavit.
2. All statements herein are based on my personal knowledge.
3. I pled guilty because I was led to believe that I would be placed in the "rider program by my attorney
4 During the proceedings I was going through bi-polar mood swings aggravated by the fact that I was refusing meds from the jail so that I could try to concentrate on my case and what was occuring
5. The victim has a history of self-abuse and has threatened to blame me for injuries that were self-inflicted
6. The victim's behavioral problems and brushes with with the law have been covered up and concealed by her mother who is the secretary for the local chief of police
7. I feel that the sentence is in no way proportional to the charges.

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8. I feel that the sentencing judge was unduly biased against me as he had represented my brother as his attorney at an earlier date
9. I feel that my court-appointed attorney was totally ineffective and that he gave false assurances
10. My attorney failed to request a change of venue.
11. My attorney failed to request a different judge
12. My attorney mentioned that the Mental Health Courts would be a better venue but then did not pursue that option.
13 My attorney did not advise me of my rights to refuse/ my rights during the court ordered psych-evaluation
14. My attorney did not accompany me to, nor protect my interests during the psych-evaluation
15 I was not informed that any information obtained during the psych-evaluation would be used against me.
16 There was mitigating evidence which my attorney failed to bring up which I feel would have been beneficial
17 Counsel refused to bring up the victim's relationship to the chief of police via the victim's mothers job as the chief's secretary.
18 Counsel did not explain the appeal process adequately nor did he take into account the deep depression which causes apathy and feelings of hopelessness
19 Because of this I lost my appeal rights and by time my mental state stabilized it was too late to pursue them
20. Counsel did not explain the P.S.I. process to me nor did he attend the interview or provide counsel during the interview. Information obtained during this process was used against me.
21. Since counsel was representing someone with mental health issues and since bi-polarism is a well documented illness, counsel should have been cognizant of my special needs. He was not.

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22. Counsel told both me and my parents that a rider was the likely result of my accepting a plea bargin.
23 I attempted to change counsel but was not allowed to
24 Counsel did not give me a realistic appreciation of what I could reasonably expect during sentencing.
25 I have nothing else to say at this time

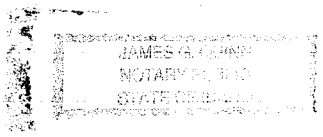
DATED THIS 9 OF ~~JAN.~~ Feb, 2010

x Woodrow Grant
WOODROW GRANT

NOTARY PUBLIC

Subscribed and Sworn this 9TH day February 2011

James G. Quinn, Notary
commission expires: 9/10/13



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* Certificate of Service *

I sent true and correct copies of my Petition for Post-Conviction Relief to the following parties via the U.S.P.S.

Court Clerk
624 E Center
Pocatello ID
83201

Bannock Co Prosecutor
624 E Center
Pocatello ID
83201

Dated this 9 day of ~~Jan~~ Feb, 2010

*Woodrow Grant
Woodrow Grant

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Inmate name Woodrow Grant
IDOC No. 30692
Address IDOC W P.O. Box 70010
Boise ID 83707

2011 FEB 14 PM 1:54
BY CW DEPUTY CLERK

Petitioner

IN THE DISTRICT COURT OF THE Sixth JUDICIAL DISTRICT

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

Woodrow Grant,
Petitioner,
vs.
State of Idaho,
Respondent.

Case No. _____

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

COMES NOW, Woodrow Grant, 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 Wengler, of the Idaho Correctional Center.

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.

4. Other: PETITIONER HAS MENTAL HEALTH ISSUES.

DATED this 9 day of February, 20 11.

X Woodrow Grant
Petitioner

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

WOODROW GRANT, 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 CORRECTIONAL CENTER, under the care, custody and control of Warden WENGLER;

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 it's 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 9 day of February, 2011.

x Woodrow Grant
Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 9TH day of February, 2011.

(SEAL)

James A. Quinn
Notary Public for Idaho
Commission expires: 9/10/13

14 PM 1:54

BY DEPUTY CLE

Woodrow Grant 80692
Full Name of Party Filing This Document
ICC-W P.O.Box 70010
Mailing Address (Street or Post Office Box)
Boise ID 83707
City, State and Zip Code

Telephone Number

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Woodrow Grant,
Plaintiff,
vs.
State of Idaho,
Defendant.

Case No.: _____

MOTION AND AFFIDAVIT FOR PERMISSION TO PROCEED ON PARTIAL PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
) ss.
County of Ada)

[X] Plaintiff [ ] Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Post-Conviction Relief. I believe I'm entitled to get what I am asking for.

2. [X] 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: Woodrow Grant Other name(s) I have used: _____

_____

Address: ICC-W P.O. Box 70010 Boise ID 83707

How long at that address? 6 mo Phone: Prisoner

Date and place of birth: _____

DEPENDENTS:

I am [X] 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: $ Ø per [ ] week [/] month

Other than my inmate account I have outside money from: None

_____

My spouse's income: $ Ø 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
	None				

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

Description (provide description for each item)	**Value**
Cash	None
Notes and Receivables	None
Vehicles:	None
Bank/Credit Union/Savings/Checking Accounts	None
Stocks/Bonds/Investments/Certificates of Deposit	None
Trust Funds	None
Retirement Accounts/IRAs/401(k)s	None
Cash Value Insurance	None
Motorcycles/Boats/RVs/Snowmobiles:	None
Furniture/Appliances	None
Jewelry/Antiques/Collectibles	None

Description (provide description for each item)		**Value**
TVs/Stereos/Computers/Electronics	NONE	
Tools/Equipment	NONE	
Sporting Goods/Guns	NONE	
Horses/Livestock/Tack	NONE	
Other *(describe)*	NONE	

EXPENSES: List all of your monthly expenses.

Expense		**Average Monthly Payment**
Rent/House Payment	NONE	
Vehicle Payment(s)	NONE	
Credit Cards: (list each account number)		
	NONE	
Loans: (name of lender and reason for loan)		
OWE PARENTS MONEY LOANED FOR LEGAL SUPPORT		
APPROX $5000		
Electricity/Natural Gas	Ø	
Water/Sewer/Trash	Ø	
Phone	Ø	
Groceries	Ø	
Clothing	Ø	
Auto Fuel	Ø	
Auto Maintenance	Ø	
Cosmetics/Haircuts/Salons	Ø	
Entertainment/Books/Magazines	Ø	
Home Insurance	Ø	

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

MISCELLANEOUS:

How much can you borrow? $ Ø 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
WARDEN WENGLER	ICC BOISE ID		6 mo
D.W. KESSLER	ICC BOISE ID		6 mo

x Woodrow Grant
Signature

WOODROW GRANT
Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 9TH day of February, 20 11.

James H. Quinn
Notary Public for Idaho
Residing at _____
My Commission expires 9/10/13

= IDOC TRUST ========== OFFENDER BANK BALANCES ========== 02/09/2011 =

Doc No: 80692 Name: GRANT, WOODROW JOHN ICC/UNIT H PRES FACIL
Account: CHK Status: ACTIVE TIER-1 CELL-5

Transaction Dates: 02/09/2010-02/09/2011

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	978.32	982.03	3.71

TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
08/03/2010	HQ0509116-001	950-REINCARCERATED	IBSUSPCHK	0.00	0.00
08/03/2010	HQ0509126-012	013-RCPT RDU	RDU	1.03	1.03
08/05/2010	HQ0509592-010	011-RCPT MO/CC	RTCP MO	50.00	51.03
08/09/2010	II0510207-936	099-COMM SPL		14.97DB	36.06
08/09/2010	II0510207-937	099-COMM SPL		12.13DB	23.93
08/16/2010	II0510956-754	099-COMM SPL		10.20DB	13.73
08/16/2010	II0510956-755	099-COMM SPL		5.59DB	8.14
08/16/2010	II0511009-014	071-MED CO-PAY	383325	5.00DB	3.14
08/23/2010	II0511745-724	099-COMM SPL		1.86DB	1.28
08/24/2010	HQ0511936-017	011-RCPT MO/CC	RTCP MO	40.00	41.28
08/25/2010	II0512197-025	100-CR INM CMM		1.86	43.14
08/30/2010	II0512627-710	099-COMM SPL		19.27DB	23.87
08/30/2010	II0512627-711	099-COMM SPL		6.80DB	17.07
08/31/2010	II0512849-010	071-MED CO-PAY	397008	7.00DB	10.07
09/03/2010	IC0513396-338	099-COMM SPL		10.00DB	0.07
09/23/2010	HQ0515727-018	011-RCPT MO/CC	289942	340.00	340.07
09/28/2010	IC0516314-557	099-COMM SPL		85.75DB	254.32
09/30/2010	HQ0516504-018	011-RCPT MO/CC	171930	100.00	354.32
10/01/2010	IC0516678-013	078-MET MAIL	114549	0.17DB	354.15
10/05/2010	IC0516897-517	099-COMM SPL		78.22DB	275.93
10/06/2010	IC0517382-020	078-MET MAIL	116152	1.73DB	274.20
10/08/2010	HQ0517870-008	011-RCPT MO/CC	056586	50.00	324.20
10/12/2010	IC0517927-561	099-COMM SPL		22.30DB	301.90
10/13/2010	IC0518343-029	078-MET MAIL	115978	1.73DB	300.17
10/19/2010	IC0518919-688	099-COMM SPL		280.23DB	19.94
10/20/2010	HQ0519092-009	022-PHONE TIME	116547	17.00DB	2.94
10/29/2010	HQ0520042-014	011-RCPT MO/CC	879315	25.01	27.95
11/02/2010	IC0520360-526	099-COMM SPL		21.48DB	6.47
11/03/2010	IC0520671-012	078-MET MAIL	117188	2.75DB	3.72
11/04/2010	HQ0520724-017	011-RCPT MO/CC	521575	20.00	23.72
11/09/2010	IC0521439-557	099-COMM SPL		21.79DB	1.93
11/15/2010	HQ0522095-016	011-RCPT MO/CC	076807	20.00	21.93
11/16/2010	IC0522179-646	099-COMM SPL		17.88DB	4.05
11/16/2010	IC0522304-006	078-MET MAIL	117143	2.71DB	1.34
11/29/2010	HQ0523469-014	011-RCPT MO/CC	731067	50.00	51.34
11/30/2010	IC0523588-011	070-PHOTO COPY	117142	2.80DB	48.54
12/07/2010	IC0524936-488	099-COMM SPL		36.59DB	11.95
12/10/2010	HQ0525483-003	011-RCPT MO/CC	741214	40.00	51.95
12/14/2010	IC0525877-493	099-COMM SPL		36.59DB	15.36

= IDOC TRUST ========== OFFENDER BANK BALANCES ========== 02/09/2011 =

Doc No: 80692 Name: GRANT, WOODROW JOHN ICC/UNIT H PRES FACIL
Account: CHK Status: ACTIVE TIER-1 CELL-5

Transaction Dates: 02/09/2010-02/09/2011

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	978.32	982.03	3.71

TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
12/14/2010	IC0525914-493	099-COMM SPL		-36.59DB	51.95
12/14/2010	IC0525926-670	099-COMM SPL		44.21DB	7.74
12/14/2010	IC0525974-022	078-MET MAIL	122490	4.85DB	2.89
12/17/2010	HQ0526491-008	011-RCPT MO/CC	845087	20.00	22.89
12/20/2010	IC0526734-012	078-MET MAIL	121218	6.16DB	16.73
12/21/2010	HQ0526858-009	011-RCPT MO/CC	843423	50.00	66.73
12/23/2010	IC0527219-495	099-COMM SPL		48.07DB	18.66
12/28/2010	HQ0527590-011	011-RCPT MO/CC	182745	50.00	68.66
01/04/2011	IC0528324-630	099-COMM SPL		54.13DB	14.53
01/07/2011	IC0529034-029	078-MET MAIL	127823	1.05DB	13.48
01/10/2011	HQ0529142-011	011-RCPT MO/CC	640902	30.00	43.48
01/11/2011	IC0529332-582	099-COMM SPL		6.00DB	37.48
01/18/2011	IC0529982-599	099-COMM SPL		26.48DB	11.00
01/18/2011	IC0529984-027	100-CR INM CMM		54.13	65.13
01/24/2011	IC0530741-027	078-MET MAIL	132982	2.75DB	62.38
01/25/2011	IC0530816-582	099-COMM SPL		42.29DB	20.09
01/27/2011	HQ0531291-016	061-CK INMATE	K-133158	9.25DB	10.84
01/31/2011	IC0531529-029	078-MET MAIL	132091	2.07DB	8.77
02/01/2011	IC0531587-567	099-COMM SPL		7.00DB	1.77
02/03/2011	HQ0532078-014	011-RCPT MO/CC	317879	40.00	41.77
02/08/2011	IC0532636-528	099-COMM SPL		31.26DB	10.51
02/08/2011	HQ0532829-012	022-PHONE TIME	131224	6.80DB	3.71

STATE OF IDAHO
Idaho Department of Correction
I hereby certify that the foregoing is a full, true, and
correct copy of the original on file in this office.
WITNESS my hand and official seal this 9TH
day of February A.D., 20 11.
By

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF

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

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	CASE NO. CV-11-759-PC **ORDER EXTENDING TIME FOR FILING AN ANSWER**

Based on Respondent State of Idaho's motion filed herein and good cause appearing, therefore;

IT IS HEREBY ORDERED That the Respondent is granted an extension of time for filing an Answer in this matter. Said Answer shall be filed by 3/25/11.

DATED this 25 day of February, 2011,.

Robert C. Naftz

ROBERT C. NAFTZ
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3 day of ~~February~~ March, 2011, I served a true and correct copy of the **ORDER TO EXTEND TIME FOR FILING AN ANSWER** upon each of the following individuals in the manner indicated.

WOODROW GRANT #80692 ICC - W P O BOX 70010 BOISE ID 83707	[✓] mail - postage prepaid [ ] hand delivery [ ] facsimile
JARED W. JOHNSON DEPUTY PROSECUTOR BANNOCK COUNTY COURTHOUSE POCATELLO ID 83201	[ ] mail - postage prepaid [✓] hand delivery [ ] facsimile

DALE HATCH, Clerk of the Court

By:_____
Deputy Clerk

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTING ATTORNEY
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

JARED W. JOHNSON, ISB #7812
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF

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

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	CASE NO. CV-11-759-PC **MOTION TO EXTEND TIME FOR FILING AN ANSWER**

COMES NOW, the Respondent State of Idaho by and through JARED W. JOHNSON, Deputy Prosecuting Attorney, and hereby moves this court for a 30 day extension of time for filing an Answer in this matter.

This motion is based on the Respondent not having received the necessary Affidavit from Petitioner's former Defense Attorney.

DATED this 24 day of February, 2011,

JARED W. JOHNSON
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 24 day of February, 2011, a true and correct copy of the foregoing **MOTION TO EXTEND TIME FOR FILING AN ANSWER** was delivered to the following:

WOODROW GRANT #80692
ICC - W
P O BOX 70010
BOISE ID 83707

[X] mail - postage prepaid
[ ] hand delivery
[ ] facsimile

JARED W. JOHNSON

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	)	**Case No. CV-2011-759-PC** **NOTICE OF INTENT TO DISMISS**

FACTUAL AND PROCEDURAL BACKGROUND

This case comes before this Court on a pro-se Petition for Post Conviction Relief, a Motion and Affidavit in Support for Appointment of Counsel, and a Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees filed by Woodrow Grant ("the Petitioner" or "Mr. Grant"). The State did not respond.

Pursuant to a plea agreement, Mr. Grant pled guilty to possession of methamphetamine and domestic assault and was subsequently sentenced to a term of imprisonment. The Petitioner previously filed a Rule 35 Motion for Correction or Reduction of Sentence, as well as an appeal of the denial of that motion. (*See* Pet. for Post-Conviction Relief w/ Aff. in Supp. ("Pet. for Post-Conviction Relief"), Feb. 14, 2011, 2.)

This Court is fully briefed in the Petitioner's allegations and the law. Furthermore, this Court has carefully reviewed the Petition for Post Conviction Relief and the accompanying motions and affidavits. Based upon the following discussion, this Court hereby gives the Petitioner notice of its intent to dismiss the Petition for Post Conviction Relief.

ISSUES

1. Whether to grant the Motion for Appointment of Counsel.
2. Whether to grant the Motion for Partial Payment of Court Fees.
3. Whether to grant the Petition for Post Conviction Relief.

DISCUSSION

In support of his Petition for Post Conviction Relief, Mr. Grant first argues he received the ineffective assistance of counsel. The Petitioner also alleges relief is warranted on the basis that "[t]here is evidence and material facts not previously presented or heard." (*Id.*) Mr. Grant further argues post conviction relief is appropriate because his "[g]uilty plea was not knowingly/voluntarily entered as Petitioner is mentally incompetent due to being bi-polar." (*Id.*) Finally, the Petitioner alleges the "[s]entence imposed is cruel and unusual as it is excessive in respect to the facts of the case. This violates both the U.S. Constitutional & [sic] Idaho Constitution [sic] Rights of the Plaintiff." (*Id.*) However, with the exception of some additional arguments in support of his claims of ineffective assistance of counsel, the Petitioner failed to support the other allegations with argument or evidence. Mr. Grant did not point this Court to the underlying record or any transcripts of proceedings.

1. Whether to grant the Motion for Appointment of Counsel.

a. Standard of Review

A request for appointment of counsel in a post conviction proceeding is governed by Idaho Code ("IC") §19-4904[1], which provides that a court-appointed attorney may be made available to an applicant who is unable to pay the costs of representation. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court. *Id.* (citing *Fox v. State*, 129 Idaho 881, 934 P.2d 947 (Idaho Ct.App. 1997)). When a district court is presented with a request for appointed counsel, the court will address that request before ruling on the substantive issues in the case. *Id.*

Under IC § 19-4904, the court "should determine if the petitioner is able to afford counsel and whether this is a situation in which counsel should be appointed to assist the petitioner." *Id.* at 793, 102 P.3d at 1112. In making this analysis, the court considers the typical problems with pro se pleadings, such as the fact that these types of pleadings are often conclusory and incomplete and that facts sufficient to state a claim may not be alleged because the pro se petitioner does not know what they may be. *Id.* (citing *Brown v. State*, 135 Idaho 676, 23 P.3d 138 (2001)). However, the court must examine the record to determine "whether the facts are such that they justify the appointment of counsel." *Id.* at 794, 102 P.3d at 1113. In doing so, every inference must run in the petitioner's favor where the petitioner is unrepresented and

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[1] **§ 19-4904. Inability to pay costs.**
If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, witness fees and expenses, and legal services, these costs and expenses, and a court-appointed attorney may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed.

cannot be expected to know how to allege the necessary facts. *Id.* At a minimum, the court "must carefully consider the request for counsel, before reaching a decision on the substantive merits of the petition." *Id.*

If, after examining a petitioner's claims, the court determines that such claims are frivolous, "it is essential that the petitioner be given adequate notice of the claimed defects so he has an opportunity to respond." *Id.* at 793, 102 P.3d at 1112. If the petitioner alleges facts that raise the possibility of a valid claim, the court should appoint counsel in order to give the petitioner an opportunity, working with counsel, to properly allege the necessary supporting facts. *Id*; *see also, Newman v. State*, 140 Idaho 491, 493, 95 P.3d 642, 644 (Idaho Ct.App. 2004) (Although the petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims, he should be provided with a meaningful opportunity to supplement the record and to renew his request for court-appointed counsel prior to the dismissal of his petition where he has alleged facts supporting some elements of a valid claim.). The court "should provide sufficient information regarding the basis for its ruling to enable the petitioner to supplement the request with the necessary additional facts, if they exist." *Id.*

"[A] district court presented with a request for appointed counsel in a post-conviction action must address that request before ruling on the substantive issues in the case and errs if it denies a petition on the merits before ruling on the applicant's request for counsel." *Judd v. State*, 148 Idaho 22, 218 P.3d 1, 2 (Idaho Ct.App. 2009). However,

> an order that simultaneously dismisses a post-conviction action and denies a motion for appointment of counsel will be upheld on appeal if the petitioner received notice of the fatal deficiencies of the petition and if, when the standard governing a motion for

> appointment of counsel is correctly applied, the request for counsel would properly be denied - that is, when the petitioner did not allege facts raising even the possibility of a valid claim.

Id. at 4. A determination regarding a request for the appointment of counsel and a determination regarding whether a petition for post conviction relief is subject to summary dismissal are thus governed by "quite different standards, with the threshold showing that is necessary in order to gain appointment of counsel being considerably lower than that which is necessary to avoid summary dismissal of a petition." *Id.*

b. Analysis

This Court must examine the petition to determine whether the facts alleged justify the appointment of counsel. If such facts appear to this Court to be frivolous, or the situation presented does not appear to be one in which counsel should be appointed to assist the Petitioner, this Court may deny the request for counsel.

Based on the following findings, this Court hereby DENIES the Petitioner's Motion for Appointment of Counsel, as the allegations made by the Petitioner are frivolous for the reasons stated herein. Furthermore, this Court finds the Petitioner did not allege facts raising even the possibility of a valid claim. Therefore, the appointment of counsel is not required.

2. Whether to grant the Motion for Partial Payment of Court Fees.

This Court must also determine whether the Petitioner's Motion to Proceed on Partial Payment of Court Fees should be granted. Along with that motion, the Petitioner submitted an

affidavit certifying he is unable to pay all the court costs now. Idaho Appellate Rule ("IAR") 23[2] governs the waiver of appellate filing fees. According to subsections one (1) and ten (10) of that rule, there is no filing fee required for petitions for post conviction relief. Even so, after having carefully reviewed Mr. Grant's request and the accompanying affidavit, this Court concludes the Petitioner is unable to afford whatever costs might be required for proceeding with his Petition for Post Conviction Relief. Therefore, the fee waiver request is GRANTED.

3. Whether to grant the Petition for Post Conviction Relief.

a. Standard of Review

A petition for post conviction relief is governed by the Uniform Post Conviction Procedure Act ("UPCPA"), IC §§ 19-4901 – 19-4911. Such a petition initiates a proceeding that is civil in nature. *State v. Gilpin-Grubb*, 138 Idaho 76, 79, 57 P.3d 787, 790 (2002); *State v. LePage*, 138 Idaho 803, 806, 69 P.3d 1064, 1067 (Idaho Ct.App. 2003). Under IC § 19-4901(a), a person who is convicted of or sentenced for a crime may institute a proceeding to secure relief based on a claim that the conviction was in violation of the state or federal constitutions or the laws of Idaho, or that "there exists evidence of material facts, not previously presented and

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[2] **Rule 23. Filing fees and clerk's certificate of appeal--Waiver of appellate filing fee**
(a) Filing Fees. The Clerk of the Supreme Court shall charge the following filing fees for appeals and petitions:
(1) Appeals in civil cases except for habeas corpus and post-conviction relief
$ 86.00
...
(10) Petitions for post-conviction relief
$ None
...
No appellate filing fee is required for agencies of the State of Idaho and Counties of the State of Idaho, including public defenders, pursuant to I.C. § 67-2301 and I.C. § 31-3212(2).

heard, that requires the vacation of the conviction or sentence in the interests of justice," among other grounds.

Pursuant to IC § 19-4901(b), a petition for post conviction relief is not a substitute for appeal. A petitioner is not allowed to raise any issue that could have been raised on a direct appeal, but was not so raised, unless those issues were not known and could not have reasonably been known at the time of the appeal. *Raudebaugh v. State*, 135 Idaho 602, 603, 21 P.3d 924, 925 (2001). Similarly, a post conviction petitioner may not re-litigate the same issues that were already presented in a direct appeal. *Gilpin-Grubb*, 138 Idaho at 81, 57 P.3d at 792.

IC § 19-4902(a)[3] establishes the time limits for the filing of a petition for post conviction relief, requiring that "[a]n application may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later." That section of the code also requires that "[f]acts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct."

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[3] **19-4902. Commencement of proceedings--Verification--Filing--Service--DNA testing**
(a) A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction took place. An application may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

IC § 19-4903[4] further demands that a petitioner state and identify in the application for post conviction relief the grounds upon which the application is based, the specific relief requested, all previous proceedings in the case and the facts that are within the personal knowledge of the petitioner. That section also requires that a petitioner attach affidavits, records and other evidence supporting the allegations, or recite why such evidence is not attached to the application. IC § 19-4903 has been interpreted to require that an application "must present or be accompanied by admissible evidence supporting its allegations, or the application shall be subject to dismissal," *i.e.*, the application must contain more facts than the "short and plain statement of the claim" that is required of the usual civil complaint by Rule 8(a)(1) of the Idaho Rules of Civil Procedure ("IRCP"). *Goodwin v. State*, 138 Idaho 269, 271-72, 61 P.2d 626, 628-29 (Idaho Ct.App. 2003).

IC § 19-4906(b) permits a court to dismiss the action if the court is satisfied, based on the record, that the petitioner is not entitled to relief and no purpose would be served by any further proceedings. That section also requires that the court, as a prerequisite to dismissal, give the petitioner notice of intent to dismiss and provide twenty days during which the petitioner may

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[4] **§ 19-4903. Application--Contents**
The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 19-4902. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

respond. However, under IC § 19-4906(c)[5] the court may summarily dispose of the petition upon the motion of either of the parties when, based on the record, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. No notice of intent to dismiss is required for a summary disposition under that section. *Saykhamchone v. State*, 127 Idaho 319, 321-22, 900 P.2d 795, 797-98 (1995). Summary dismissal under either section is the procedural equivalent of a motion for summary judgment. *Ramirez v. State*, 113 Idaho 87, 741 P.2d 374 (Ct. App. 1987); *Roman v. State*, 125 Idaho 644, 873 P.2d 898 (Ct.App. 1994). Thus, in determining whether to summarily dismiss, a court must view the facts in a light most favorable to the petitioner and determine whether those facts would entitle the petitioner to relief if accepted as true. *Ferrier v. State*, 135 Idaho 797, 798, 25 P.3d 110, 111 (2001); *Goodwin*, 138 Idaho at 272, 61 P.2d at 629; *LePage*, 138 Idaho at 806, 69 P.3d at 1067. If the court finds that the accepted facts entitle the petitioner to relief, the court must conduct an evidentiary hearing. *LePage*, 138 Idaho at 806-07, 69 P.3d at 1067-68.

Summary dismissal of an application may be appropriate, even if the State does not controvert the petitioner's facts, because "the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law." *Goodwin*, 138 Idaho at 272, 61 P.2d at 629; *LePage*, 138 Idaho at 807, 69 P.3d at 1068. Further, a petition is "subject to summary dismissal if the petitioner has not presented evidence

[5] **IC § 19-4906(c).** 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.

establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." *Raudebaugh*, 135 Idaho at 604, 21 P.2d at 926.

> Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual 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); *Ramirez v. State*, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct.App.1987). Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct.App.1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct.App.1986).

Franck-Teel v. State, 143 Idaho 664, 667-68, 152 P.3d 25, 28-29 (Idaho Ct.App. 2007). The court in that case further explained the procedure for summary dismissal when the state has not provided notice of the grounds for dismissal.

> [I]f the state's motion fails to give notice of the grounds, the court may grant summary dismissal only if the court first gives the applicant twenty days' notice of intent to dismiss and the grounds therefore, pursuant to Section 19-4906(b). *Flores v. State*, 128 Idaho 476, 478, 915 P.2d 38, 40 (Ct.App.1996). This procedure is necessary so that the applicant is afforded an opportunity to respond and to establish a material issue of fact. *Id.*

Id. at 668, 152 P.3d at 29. "On appeal from a summary disposition, [the Court of Appeals] exercises free review. *Yon v. State*, 124 Idaho 821, 822, 864 P.2d 659, 660 (Ct.App.1993); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.App.1988)." *Abbott v. State*, 129 Idaho 381, 382, 924 P.2d 1225, 1228 (Idaho Ct.App. 1996).

DISCUSSION

As explained previously, the bulk of Mr. Grant's Petition for Post Conviction Relief concerns the alleged failure of his counsel to adequately represent him. The Petitioner set forth 12 grounds in support of that claim. However, Mr. Grant failed to elaborate on or offer support in the form of argument or additional evidence as to the other grounds raised in support of post conviction relief. Therefore, this Court will only address in detail the Petitioner's contentions regarding ineffective assistance of counsel. This Court will review those claims in turn.

a. Standard of Review Governing a Claim of Ineffective Assistance of Counsel

"In order to establish a violation of the constitutional guarantee to effective assistance of counsel, the defendant must show *both* deficient performance and resulting prejudice." *Beasley v. State*, 126 Idaho 356, 359, 883 P.2d 714, 717 (Idaho Ct.App. 1994) (internal citations omitted). The test for evaluating whether a criminal defendant has received the effective assistance of counsel is two-pronged and requires that the petitioner establish: (1) counsel's conduct was deficient because it fell outside the wide range of professional norms; and (2) the petitioner was prejudiced as a result of the deficient conduct. *Pratt v. State*, 134 Idaho 581, 584, 6 P.3d 831, 834 (2000); *Ray v. State*, 133 Idaho 96, 101, 982 P.2d 931, 936 (1999) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984)). "Facts presented must be in the form of competent, admissible evidence. Bare assertions and speculation, unsupported by specific facts, do not suffice to show ineffectiveness of counsel." *Roman v. State*, 125 Idaho 644, 649, 873 P.2d 898, 903 (Idaho Ct.App. 1994)(internal citations omitted).

In assessing the reasonableness of attorney performance, counsel is presumed to have

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Pratt*, 134 Idaho at 584, 6 P.3d at 834; *State v. Matthews*, 133 Idaho 300, 306-07, 986 P.2d 323, 329-30 (1999) (citing *Strickland*, 466 U.S. at 690). Strategic and tactical decisions will not be second guessed or serve as a basis for post conviction relief under a claim of ineffective assistance of counsel unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective review. *Pratt*, 134 Idaho at 584, 6 P.3d at 834; *Giles v. State*, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994), *cert denied* 513 U.S. 1130 (1995). To satisfy the prejudice prong of the *Strickland* test, the applicant must establish that there is a reasonable probability that, absent counsel's unprofessional errors, the outcome of the proceeding would have been different. *Milburn v. State*, 135 Idaho 701, 706, 23 P.3d 775, 780 (Idaho Ct.App. 2000)(citing *Strickland*, 466 U.S. at 694); *Fox v. State*, 125 Idaho 672, 674, 873 P.2d 926, 928 (Idaho Ct.App. 1994). The applicant must show that the attorney's deficient conduct 'so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' *Milburn*, 135 Idaho at 706, 23 P.3d at 780 (quoting *Strickland*, 466 U.S. at 686). The applicant must show actual unreasonable performance by trial counsel and actual prejudice. *Id.* "Hence, dismissal is proper if the applicant fails to meet his burden under either part." *Fox*, 125 Idaho at 674, 873 P.2d at 928; *Roman*, 125 Idaho at 649, 873 P.2d at 903 ("To avoid summary dismissal, a post-conviction claim of ineffective assistance of counsel must sufficiently allege facts under both prongs of the test.").

b. Analysis

1. Change of venue

The Petitioner first argues his counsel was ineffective because he "refused to attempt a change of venue even when counsel was informed that the victim's mother was a secretary of the local police chief." (Pet. for Post-Conviction Relief w/ Aff. in Supp. ("Pet. for Post-Conviction Relief"), Feb. 14, 2011, 2.) In further support of that argument, the Petitioner stated the following in his affidavit: "The victim has a history of self-abuse and has threatened to blame me for injuries that were self-inflicted. The victim's behavioral problems and brushes with the law have been covered up and concealed by her mother who is the secretary for the local chief of police." (Aff. in Supp., Feb. 14, 2011, 5:5-6.)

"The reasons for a change of venue, as set forth in Idaho Criminal Rule 21(a) and 21(b)[6], are that a fair and impartial trial cannot be had in the county where the case is pending or that the convenience of the parties and the witnesses would best be served by a change of the venue." *State v. Fee*, 124 Idaho 170, 175, 857 P.2d 649, 654 (Idaho Ct.App. 1993). "[T]he issue of whether a change of venue should be requested is a matter of trial strategy and tactical choice, not subject to review as a claim of ineffective assistance of counsel in the absence of proof of inadequate preparation or ignorance on counsel's part. *State v. Carter,* 103 Idaho 917, 923, 655 P.2d 434, 440 (1982)." *Id.*

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[6] **Rule 21. Change of venue**
(a) For Prejudice. The court upon motion of either party shall transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.
(b) Other Cases. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceedings as to the defendant to another county.

In this case, there is nothing in the record to establish the basis for a change of venue, even if such a request had been made. As such, the failure of the Petitioner's counsel to move for a change of venue did not constitute ineffective assistance of counsel since that decision was clearly a matter of trial strategy and tactical choice.

2. Counsel refused to request a "change of Judges"

The Petitioner next argues his counsel was ineffective because he "refused to request a change of judges and did not request Judge Naftz recuse [sic] himself when counsel was informed that Judge Naftz had been an attorney representing the Petitioner's brother at an earlier date and due to the circumstances surrounding that previous case might be biased." (Pet. for Post-Conviction Relief at 2-3.) In his "Affidavit in Support", Mr. Grant further states: "I feel that the sentencing judge was unduly biased against me as he had represented my brother as his attorney at an earlier date." (Aff. in Supp. at 6:8.) However, the Petitioner offered no support for those bare allegations and does not allege any specific points of error that might reveal the district court's bias. "Furthermore, the decision whether to request the recusal of a trial judge is a strategic matter, one which should be left to the discretion of the attorney. *See* Giles v. State, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994)." *Small v. State*, 132 Idaho 327, 333, 971 P.2d 1151, 1157 (Idaho Ct.App. 1999). As such, the failure of the Petitioner's counsel to request the recusal of the trial judge did not constitute ineffective assistance of counsel.

3. Counsel did not pursue the option of Mental Health Court

Mr. Grant next argues: "Counsel was fully aware of Petitioner's mental health issues and did not actively pursue the option of the Mental Health Court." (Pet. for Post-Conviction Relief

at 3.) The Petitioner does not offer any admissible evidence in support of this contention. Mr. Grant re-stated this allegation in his Affidavit, however, he attached no documentation to verify this claim, nor did he submit records or other evidence. (*See* Aff. in Supp. at 6:12.) Therefore, as this is only a bare and conclusory allegation, unsubstantiated by any admissible evidence, Mr. Grant has not proven this allegation by a preponderance of the evidence as required by the statutes governing post conviction proceedings. This "court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law." *Downing v. State*, 132 Idaho 861, 861, 979 P.2d 1219, 1219 (Idaho Ct.App. 1999) (internal citations omitted). As the application did not present adequate evidence supporting this allegation, Mr. Grant has not shown his counsel was ineffective because he failed to "actively pursue the option of the Mental Health Court."

4. Counsel was ineffective for failing to protect the Petitioner's interests during the "psych-evaluation"

Mr. Grant next claims his counsel was ineffective because he

> failed to advise, attend, or protect client's interests during the psych-evaluation. Nor did he advise the Petitioner that the Petitioner was not obligated to provide information that would be used against him. This is ineffective assistance of counsel under the Estrada case and thus violates the Petitioner's U.S. Constitutional and Idaho Constitutional Rights.

(Pet. for Post-Conviction Relief at 3.) In his Affidavit in Support, the Petitioner merely reiterated these same allegations. (*See* Aff. in Supp. at 6:13-15.)

Mr. Grant appears to argue his counsel failed to advise him of his rights regarding some type of psychological evaluation. However, beyond his use of the term "psych-evaluation", Mr.

Grant does not explain what type of evaluation was conducted. He references the case of *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006), which pertains to the rights afforded to defendants in relation to psychosexual evaluations. As the Petitioner did not request the review of the underlying criminal record, this Court cannot examine any evaluations or even determine what type of "psych-evaluation", if any, occurred here. If the report at issue is a psychosexual evaluation, certain Fifth Amendment rights would attach, as concluded by the Idaho Supreme Court in *Estrada*. However, without any information regarding the type of report at issue, this Court is unable to evaluate this claim further. Moreover, Mr. Grant has presented no admissible evidence to show how his alleged participation in any evaluation implicates his counsel in this case. As such, this is another unsubstantiated claim, which can provide no relief under the Uniform Post Conviction Procedure Act.

5. Failure of counsel to submit mitigating evidence

Mr. Grant further argues his counsel was ineffective because he "failed to provide the sentencing court with mitigating evidence and evidence conflicting the victim's allegations despite such evidence being available." (Pet. for Post-Conviction Relief at 3.) Mr. Grant offered nothing more than that statement. In his Affidavit in Support, he merely stated: "There was mitigating evidence which my attorney failed to bring up which I feel would have been beneficial." (Aff. in Supp. at 6:16.) There was nothing submitted to this Court that identified any mitigating evidence that might have changed the outcome of these proceedings. *See State v. Wood*, 132 Idaho 88, 97, 967 P.2d 702, 711 (1998)(Because the petitioner failed to submit anything to the court that "identifie[d] any mitigating evidence that might have changed the

outcome of these proceedings", the petitioner failed to show ineffective assistance of counsel.). Therefore, as these contentions amount to bare and conclusory allegations, unsubstantiated by any admissible evidence, Mr. Grant has failed to show ineffective assistance of counsel as to this claim.

6. Failure of counsel to offer evidence disputing the victim's allegations and failure to show the victim's mother acted inappropriately

The Petitioner next argues post conviction relief is warranted because: "Counsel failed to show that victim's mother used her position as secretary to the local Chief of Police to manipulate the system in such a way as to paint the victim as an innocent [with] no criminal tendencies." (Pet. for Post-conviction Relief at 3.) Again, Mr. Grant offers nothing more than this statement and a nearly identical statement included in his supporting affidavit. (*See* Aff. in Supp. at 6:17.) He does not point this Court to any evidence to verify these allegations, or even detail how the victim's mother "used her position to manipulate the system . . . ." As such, Mr. Grant has not proven this allegation by a preponderance of the evidence as required by the statutes governing post conviction proceedings, as explained previously. Therefore, Mr. Grant has not shown his counsel was ineffective because he allegedly failed to provide information regarding the victim's claims or because he failed to demonstrate that the victim's mother acted inappropriately.

7. Counsel did not explain the Petitioner's appeal rights

Mr. Grant's next argument states in full:

Counsel did not adequately explain the appeal process to the Petitioner and did not realize that, due to his mental health issues, the Petitioner was unable to make an informed

> decision as to whether to pursue his appeal options. This caused the Petitioner to lose his chance at appealing the sentence and possibly receiving a lesser sentence.

(Pet. for Post-conviction Relief at 3.) In his supporting affidavit, Mr. Grant also stated: "Counsel did not explain the appeal process adequately nor did he take into account the deep depression which causes apathy and feelings of hopelessness. Because of this I lost my appeal rights and by time [sic] my mental state stablized [sic] it was too late to pursue them." (Aff. in Supp. at 6:18-19.)

Again, Mr. Grant has failed to adequately support this claim. The Petitioner has not produced facts sufficient to state a claim that entitles him to relief. Even assuming counsel failed to adequately advise the Petitioner as to the appeal process and that this amounted to the deficient performance of counsel required under the first part of the *Strickland* test, Mr. Grant has nonetheless failed to demonstrate any prejudice resulting from such conduct, which is required by the second part of that test. In the absence of a showing of prejudice, the Petitioner's claim of ineffective assistance of counsel in this regard must also fail. *See Martinez v. State*, 125 Idaho 844, 847, 875 P.2d 941, 944 (Idaho Ct.App. 1994).

8. Counsel failed to protect the Petitioner's interests during the Pre-Sentence Investigation

Mr. Grant also argues post conviction relief is warranted on the basis that "[c]ounsel failed to advise, attend, or protect client's interests during the Pre-Sentence Investigation (P.S.I.)." (Pet. for Post-Conviction Relief at 3.) Mr. Grant goes on to state:

> The interview was conducted by a biased party and the information garnered was used adversely against the Petitioner. At no time did counsel inform Petitioner that he was not

obligated to provide information to be used against him and said rights were gauranteed [sic] by the US and Idaho Constitution.

(*Id.* at 3-4.) In his affidavit, the Petitioner further stated: "Counsel did not explain the P.S.I. process to me nor did he attend the interview or provide counsel during the interview. Information obtained during this process was used against me." (Aff. in Supp. at 6:20.)

The Idaho Court of Appeals has determined that counsel cannot provide ineffective assistance by failing to advise a client concerning his presentence investigation since a presentence interview is "not a critical stage of the adversarial proceedings . . . ." *Stuart v. State*, 145 Idaho 467, 471, 180 P.3d 506, 510 (Idaho Ct.App. 2008). "'[I]f the stage is not critical, there can be no constitutional violation, no matter how deficient counsel's performance.' *United States v. Benlian*, 63 F.3d 824, 827 (9th Cir.1995); *see Estrada*, 143 Idaho at 562, 149 P.3d at 837." *Hughes v. State*, 148 Idaho 448, 452, 224 P.3d 515, 519 (Idaho Ct.App. 2010.) Furthermore, the defendant bears the burden of objecting to a PSI at the time of sentencing. *Cunningham v. State,* 117 Idaho 428, 788 P.2d 243 (Idaho Ct.App. 1990).

Thus, in light of the above holdings, the Petitioner's claims of ineffective assistance in relation to the presentence investigation must fail. The Petitioner further failed to offer any admissible evidence in support of this contention. Therefore, as this is only a bare and conclusory allegation, unsubstantiated by any admissible evidence, Mr. Grant has not proven this allegation by a preponderance of the evidence as required by the statutes governing post conviction proceedings.

9. Counsel should have recognized and accounted for the Petitioner's mental health issues

Mr. Grant argues his counsel was ineffective in failing to recognize the Petitioner's mental health issues and addictive behaviors. Mr. Grant stated: "Since counsel was aware of the Petitioner's mental health issues and addictive behaviors, the attorney should have been cognizant of the Petitioner's bi-polar mood swings and recognized depression driven behaviors such as giving up and not appealing the sentence and conviction." (Pet. for Post-Conviction Relief at 4.) In his Affidavit in Support, Mr. Grant made additional arguments:

> During the proceedings I was going through bi-polar mood swings aggravated by the fact that I was refusing meds from the jail so that I could try to concentrate on my case and what was occuring [sic].
>
> ...
>
> Since counsel was representing someone with mental health issues and since bi-polarism [sic] is a well documented illness, counsel should have been cognizant of my special needs. He was not.

(Aff. in Supp. at 6:4, 21.)

Although it is not completely clear, it appears to this Court that Mr. Grant is alleging his counsel was ineffective for failing to recognize that the Petitioner was not mentally competent at the time he entered his plea. *See* IDAHO CODE ANN. § 18-210 (2010)("No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.") "The standard to determine competency to stand trial is whether the defendant has 'the capacity to understand the proceedings against him and (2)

assist in his defense.'" *Ridgley v. State*, 148 Idaho 671, 678, 227 P.3d 925, 932(2010)(quoting *Dusky v. U.S.*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)).

> In order to find that petitioner's trial counsel was ineffective for refusing to request a ... hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings. In [*Jeter*, 417 S.E.2d at 596], this Court proclaimed that in proving *Strickland* prejudice within the context of counsel's failure to fully investigate the petitioner's mental capacity, "the [petitioner] need only show a 'reasonable probability' that he was ... incompetent at the time of the plea."

Id. Thus, in a post conviction relief action, the petitioner has the burden of proving by a preponderance of the evidence that he was incompetent when he entered his guilty plea. *Id.*(internal citations omitted).

In this case, Mr. Grant has not provided admissible evidence showing that there is a reasonable probability that he was incompetent at the time he entered his plea. Mr. Grant offered nothing more than his own allegations that he was suffering from "bi-polar mood swings" and affected by "depression driven behaviors, such as giving up and not appealing the sentence and conviction." (Pet. for Post-Conviction Relief at 4.) The Petitioner's own conclusory and bare assertions alone are not sufficient to survive summary dismissal. Mr. Grant's affidavit offers nothing more than a mere conclusion that he was not competent to understand the nature of the proceedings and knowingly enter into a guilty plea, and is also unsupported by any facts as to his alleged mental incompetency. Without something in the record suggesting that an examination would have shown that Mr. Grant was incompetent, there is nothing to satisfy the prejudice prong of *Strickland*, and this claim must also fail.

10. Counsel made false assurances regarding the plea agreement and possible sentence

The Petitioner next argues his "attorney made false assurances of what the plea bargin [sic] would accomplish and what kind of sentence the Plaintiff could expect. The attorney also related these assurances to the Petitioner's family." (Pet. for Post-Conviction Relief at 4.) In his affidavit, Mr. Grant states that his attorney led him to believe he would be placed in the "rider" program. (Aff. in Supp., Feb. 9, 2011, 5:3.) He further alleged: "Counsel told both me and my parents that a rider was the likely result of my accepting a plea bargin [sic]." (*Id.* at 7:22.) Finally, Mr. Grant stated: "Counsel did not give me a realistic appreciation of what I could reasonably expect during sentencing." (*Id.* at 7:24.)

The Idaho Court of Appeals has given the following pertinent explanation regarding counsel's role in the plea process:

> Where, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Griffith v. State*, 121 Idaho 371, 373, 825 P.2d 94, 96 (Ct.App.1992). *See also Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985); *State v. Soto*, 121 Idaho 53, 55, 822 P.2d 572, 574 (Ct.App.1991). When it is asserted that a guilty plea was the product of ineffective assistance, to prove the prejudice prong the defendant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59, 106 S.Ct. 366; *Dunlap v. State*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004).

Nevarez v. State, 145 Idaho 878, 884, 187 P.3d 1253, 1259 (Idaho Ct.App. 2008.)

Mr. Grant does not explain the alleged "false assurances" made by his counsel. Furthermore, he does not point to the record or offer any other evidence regarding this contention. As such, the Petitioner has utterly failed to prove the prejudice prong, as he has not

shown or even argued "that there is a reasonable probability that, but for counsel's errors, he ... would not have pleaded guilty and would have insisted on going to trial." *Id.* As such, his claim of ineffective assistance in this regard cannot stand.

11. The Petitioner's efforts to fire his court-appointed attorney failed

Mr. Grant next alleges he "attempted to rid himself of the court-appointed public defender and get someone else assigned who had the Petitioner's best interests in mind." (Pet. for Post-Conviction Relief at 4.) Mr. Grant further stated the following in his affidavit: "I attempted to change counsel but was not allowed to." (Aff. in Supp. at 7:23.)

Through these allegations, the Petitioner makes absolutely no claim that his counsel was deficient or that he was prejudiced by any alleged deficiency. Mr. Grant further offered no documentation regarding his attempts to fire his court-appointed attorney. Therefore, as this contention is not even oriented toward a claim of ineffective assistance of counsel and is unsupported by the required evidence, it cannot stand.

12. Counsel failed to call certain witnesses

The Petitioner argues his counsel was inadequate by failing to "bring up the testimony of the witnesses who supported the Petitioner's side nor did counsel have the private investigators findings brought up during the sentencing phase." (Pet. for Post-Conviction Relief at 4.) Mr. Grant offered nothing more in support of this allegation.

The Idaho Court of Appeals has set forth the following succinct explanation regarding the decision to call witnesses:

> It is well settled that the decision whether to call a particular witness is a strategic or tactical decision which will not be second-guessed or serve as a basis for post-conviction relief under an alleged claim of ineffective assistance of counsel unless that decision is shown to have resulted from inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation. Davis v. State, 116 Idaho 401, 775 P.2d 1243 (Ct.App.1989); *see also* State v. McKenney, 101 Idaho 149, 609 P.2d 1140 (1980), *citing* State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975).

Gabourie v. State, 125 Idaho 254, 258, 869 P.2d 571, 575 (Idaho Ct.App. 1994).

The petition submitted by Mr. Grant does not provide any basis for an objective evaluation regarding his counsel's decision whether to call witnesses. Once again, the Petitioner has submitted a conclusory statement and presented no facts to give rise to a genuine issue of material fact as to whether his counsel's performance fell outside the wide range of professional norms. Furthermore, the decision whether to call a particular witness is a strategic or tactical decision. Therefore, his claim of ineffective assistance in this regard also fails.

13. The Petitioner did not adequately support his claims of ineffective assistance

Notwithstanding the preceding discussion, Mr. Grant failed to show how his counsel's performance fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052. First, Mr. Grant failed to demonstrate that his counsel's performance fell outside the wide range of professional norms, as he offered nothing more than conclusory statements. Mr. Grant did not support his allegations of ineffective assistance with documentation or make any argument regarding how he was prejudiced by any alleged deficient conduct. Secondly, even accepting the Petitioner's claim that his counsel was inadequate, the Petitioner still failed to demonstrate prejudice, as he offered no specific facts and made no argument that the outcome of

his case would have been different but for his attorney's unprofessional errors. Therefore, Mr. Grant's allegation that his counsel was ineffective is no more than a conclusory allegation. "Bare assertions and speculation, unsupported by specific facts, do not suffice to show ineffectiveness of counsel." *Roman*, 125 Idaho at 649, 873 P.2d at 903. As such, the Petitioner's claims of ineffective assistance of counsel are without merit, and his Petition for Post Conviction Relief cannot be granted on that basis.

c. The Petitioner failed to support any of his claims with sufficient evidence

The applicant in a post conviction proceeding must prove the allegations upon which the request for relief is based by a preponderance of the evidence. Therefore, an application for post conviction relief must include evidence supporting its allegation, or the application must state why such supporting evidence is not included. This "court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law." *Downing v. State*, 132 Idaho 861, 861, 979 P.2d 1219, 1219 (Idaho Ct.App. 1999) (internal citations omitted).

Mr. Grant has only offered bare and conclusory allegations unsubstantiated by any admissible evidence. For example, this Court determined Mr. Grant did not satisfy his burden of proof regarding his claim of ineffective assistance of counsel. Likewise, as he offered nothing more than short, conclusory statements regarding his additional grounds for post conviction relief, he has not proven those allegations by a preponderance of the evidence, either. 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. IDAHO CODE ANN. § 19-4903 (2010). The application in this case did not present adequate evidence supporting any of the Petitioner's allegations. Therefore, as Mr. Grant has failed to raise a genuine issue of material fact that, if resolved in the Petitioner's favor, would entitle him to the requested relief, summary dismissal of the Petition for Post Conviction Relief is warranted. As such, in accordance with Idaho Code § 19-4906, and having given the Petitioner adequate notice of the claimed defects contained in his Petition for Post Conviction Relief, this Court hereby indicates its intention to summarily dismiss Mr. Grant's petition.

CONCLUSION

This Court DENIES the Petitioner's request for the appointment of counsel because this Court finds the Petitioner's claims are without merit. The Court hereby GRANTS the Petitioner's Motion for Fee Waiver.

Based on the foregoing and in accordance with Idaho Code § 19-4906, this Court hereby indicates its intention to dismiss the Petitioner's request for post conviction relief. The Petitioner must submit a suitable reply, appropriately addressing his arguments in support of post conviction relief, as well as satisfactorily indicating the reasons he is entitled to such relief, within twenty (20) days from the date of the entry of this Notice of Intent to Dismiss. If, after submitting additional information, the Petitioner alleges *facts* sufficient to raise the possibility of a valid claim, rather than bare, conclusory allegations, this Court will again consider whether the claims merit an evidentiary hearing. However, if the Petitioner fails to reply within the allotted time frame, this matter will be dismissed without further action of this Court.

IT IS SO ORDERED.

DATED this 17 day of March, 2011.

Robert C. Naftz

ROBERT C. NAFTZ
DISTRICT JUDGE

Copies to:
Mark L. Hiedeman
Woodrow Grant, IDOC No. 80692

Woodrow Grant #80692
ICC
P.O. Box 70010
Boise ID 83707

Prisoner Pro Se

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE STATE OF IDAHO, IN AND FOR BANNOCK COUNTY

Woodrow Grant,
Petitioner,

vs.,
State of Idaho,
Respondent.

Case No. CV-2011-759-PC

Motion to Amend Petition for Post-Conviction Relief

Comes now, Woodrow Grant, the Petitioner in this case, who requests that this Court allow him to amend the PCR by adding the following statement:

The Petitioner, Woodrow Grant, specifically requests this Court reviews the underlying criminal records including, but not limited to, the county jail's records during defendant's stay there, the psych-evaluation, and the past and current medical records including mental health files

Dated this 29th of March, 2011

Woodrow Grant #80692

*Woodrow Grant

Woodrow Grant #80692
ICC
P.O. Box 70010
Boise ID 83707
Prisoner Pro Se

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Woodward Grant,
Petitioner,
vs.,
State of Idaho,
Respondent,

Case No. - CV-2011-759-PC

Petitioner's Response to Courts Notice of Intent to Dismiss

Comes now, Woodrow Grant, the Petitioner, to respond to the Notice of Intent to Dismiss

Timeliness

Grant is submitting this Response by mailing it under the "prison mailbox rule" on the 29th of March, 2011. This is 12 days after the Notice of Intent was filed by this Court

Discussion

I Grant ~~specifi~~ specifically requested appointment of counsel because Grant is currently incarcerated and cannot gather the records and evidence which he wanted to be put on record.

Furthermore Grant doesn't have the ability or legal knowledge to represent himself personally to the standards this Court is accustomed to.

After reading the following Response where Grant details the information that he wants presented, it will be readily apparent as to why the Court should consider, or reconsider, appointment of counsel in this matter

II As this Court noted, the bulk of the PCR submitted by Grant involves allegations of ineffective assistance of counsel. 12 grounds were brought up;

1. Change of Venue / Change of Judges

A Grant requested a change of venue be requested by his attorney for the following reasons;

I Victim's mother was the secretary of the local police chief. As such, and knowing how close-knit the law-enforcement community is, Grant had worries that this would cause prejudice against him.

II Judge Naftz had previously represented Grant's brother in a criminal case. Grant was concerned that Judge Naftz would associate the brother's criminal actions with Grant's and cause presuppositions of guilt and prejudice

B. Grant feels these fears were warrented because;

I At sentencing the Judge went beyond both the plea-agreement, and the State's recommendations and sentenced Grant to 9 fixed - 11 indeterminate.

II Grant was told by P.D. Dykeman that, the Judge told Dykeman verbally that, if Grant accepted plea that at worst, all sentences would run concurrent. When this did not occur Grant felt this was due to Judge Naftz's prejudice against Grant

C. Grant asserts that failure to request a change of venue or the recusal was not a matter of trial strategy or tactical choice but rather a matter of not wanting to exert himself and protect Grant's best interests, by the P.D.

D Because of counsel's actions, Grant believes that he received a more severe sentence then he would have received either in another court or before another Judge

2. Mental Health Court

A Grant has a long history of mental health issues. Grant is unable to obtain these records himself but can identify where they are located so that this Court can obtain access and examine them. Grant is willing to sign whatever medical releases are required

B. Records include;

I Records from HealthWest of American Falls, ID. Prior to arrest or incarceration the staff at HealthWest diagnosed Grant as being bi-polar and issued medication.

II Records from the Bannock County Jail during Grant's stay will show jail staff diagnosed Grant as bi-polar and issued him Lithium, Amitripalene & Seraquil

III Records from IDOC will show that prison staff diagnosed Grant as bi-polar and at ICC, the C.M.S. mental health practitioner has Grant taking a whopping 1200mg of Lithium daily

IV While held in the Bannock County Jail, Grant was seen three times by the Court-appointed mental health examiner. These records will show Grants mental issues

C. During the initial interview with the court appointed mental health examiner, Grant was told that he would be a good candidate for the mental health court system. While the examiner said he could not state that in his report he did say that the public defender should pursue that avenue.

D. Grant did request his public defender attempt to have this case be referred to the mental health court but as for as Grant can tell, no attempt was made

E. Grant asserts that, if the case had been moved to the mental health court, the outcome would have been substantially different

F Grant asserts that Public Defender Dykeman was fully aware of Grant's mental health issues due to the diagnosis of the county jail, the report of the mental health evaluator, and because Grant himself informed the P.D. numerous times

3. FAILURE TO PROTECT CLIENT'S INTERESTS DURING THE PSYCH-EVAL

PETITIONERS RESPONSE - 3

A Grant was ordered by this Court to participate in a psychological evaluation. Grant asserts his rights were violated & his attorney provided ineffective assistance of counsel because

I Although ESTRADA VS STATE pertains to the rights afforded to defendants in relation to psychosexual evaluations, it seems reasonable to draw the conclusion that ESTRADA should afford those same rights to all psychological evaluations, not merely the psychosexual ones. Grants 5th Amendment rights were violated

II Information garnered during the psych eval was used to the detriment of Grant during the sentencing phase.

III P.D. Dykeman should have informed Grant that the mental health examiner was not bound by patient/doctor privilege and anything said by Grant could and, most likely, would be used against him by the state.

IV The mental health examiner had three different sessions with Grant. At no time did the P.D. step in and see what sort of information was being asked of Grant or verify that the mental health examiner was not garnering information that would be used against Grant.

V The P.D. never informed Grant that he was not even required to participate in the psych-eval. That Grant was not required to provide information against himself even if there was a court order in effect.

VI P.D. Dykeman provided ineffective assistance as there is no way the lack of support by P.D. Dykeman could be considered a trial strategy or tactical choice. It is not a discretionary choice to fail to notify defendants of their rights against self-incrimination when they are ignorant of those rights.

4. FAILURE TO SUBMIT MITIGATING EVIDENCE

A. Grant did have mitigating evidence which was ~~fa~~ not presented to court but will need the assistance of court appointed counsel to procure it. Said evidence is not limited to the following:

I Mental health records from public and private institutions.
II The police statement of the only witness, Ashley Gulgelmen, which supported Grant's assertions of how minimal any contact between the victim and Grant was
III The statement by Ashley Gulgelman to the private investigator hired by P.D. Dykeman which states that the detective interviewing her (Detective Oak) was only interested in ~~da~~ evidence damning Grant rather then what actually happened
IV Testimony of the private investigator to the fact that the police interview of Ashley Gulgelmen was conviencantly lost by the State until it was "discovered" by the P.I..
V Photographs of the victim, taken by the state investigators, showing the actual inconsequential injuries suffered by the victim.
VI And while Grant did accept a plea bargin and pled guilty to the charges, he did not have the opportunity to state his side to rebut the prosecutions blown-out-of-proportion discription of the facts surrounding the incident Grant was involved in.

B. Because of the P.D.'s failure to provide this Court with the mitigating evidence discribed above, Grant alleges that he received a much harsher sentence then he would've had the P.D. provided adequate assistance of counsel.

5. FAILURE TO EXPLAIN APPEAL RIGHTS

A. P.D.s are appointed to defendants to represent them in the criminal process and ensure that the defendants rights are protected. This is done because most defendants are fairly ignorant of the legal system and their rights within that system.

Grant was no exception. Add to this Grant's mental health issues and it becomes apparent that it was part of the P.D.'s duties to sit down with Grant and explain the importance of the appeal process to him and make

certain Grant was fully cognizant of the importance of the appeal process. P.D. Dykeman did not do this.

I Because of P.D. Dykeman's failure to explain the ~~appl~~ appeal process to Grant, combined with Grant's mental health issues, an appeal was never filed and the opportunity to do so was lost

II The loss of the appeal could be construed as effectively stripping Grant of the right... and in trying to regain those rights the Court is prejudiced against hearing Grant's claims and barred by law.

6 FAILURE TO PROTECT DEFENDANT'S RIGHTS DURING P.S.I. INTERVIEW

A. While the defendant normally would bear the burden of objecting to a P.S.I. at the time of sentencing, the defendant's mental health issues caused him not to. As a bi-polar individual, the crushing depression following high-stress events (such as being arrested, tossed in jail, court, being found guilty, et al) causes the individual to lapse into dispair and just give up. So in this case it was vital that the P.D. step up and make sure the ~~he~~ defendant was making intelligent decisions in his best interests. The P.D. did not inform Grant that he had the following options

I. The ability to object to a court-ordered P.S.I

II. The right of not giving up information to anyone that could be used to the detriment of Grant in the criminal court process

III. Simply stressing to Grant that anything he told the P.S.I Investigator could, and would be used.

B Furthermore, Grant was not given the opportunity to go over the P.S.I with the P.D. and correct mistakes, assumptions, or unproven allegations

C Grant asserts that the P.S.I. is incorrect and that he specifically requested the P.D. have the P.S.I. amended to correct the misinformation but was rebuffed.

7 MENTAL HEALTH ISSUES

A Grant is not arguing that he was only incompetent when entering his plea; Grant is arguing that he was pretty much incompetent during the entire criminal proceeding

The proof of this is in the record. All of the mental health examiners who have examined Grant have agreed that he needs to be heavily medicated in order to function

I The reports of all the mental health examiners, both in the free-word and in the criminal system.

II The medical communities very definition of severe bi-polarism

III From the inside of a prison, Grant cannot provide this Court with the various mental exams he has participated in over the years. Grant is more then willing to sign a release so that all records are available to the court

IV As to the medical community's thoughts on bi-polarism ... All Grant can provide is hearsay as he is not a mental health specialist. Granting an evidenciary hearing with appointed counsel will give this Court an opportunity to question an expert in the subject if the court-appointed attorney provides one as a witness.

8 COUNSEL MADE FALSE ASSURANCES IN RE SENTENCING AND PLEA AGREEMENTS

A. Grant attempted to fire his P.D. prior to making a plea. After the attempt was denied the following occurred;

I P.D. Dykeman had a meeting with the Judge. After the meeting the P.D. said that the Judge verbally agreed that in the event of a plea agreement, the worst case scenario for Grant would be all sentences running concurrent for a total of 4 fixed/6 indeterminate.

II When Grant was wavering on accepting the plea-bargin P.D. Dykeman told Eunice & Eric Grant to encourage their son to take the plea-agreement as he would only get a rider and a sentence of ~~5 or~~ 4 or 5 years fixed. Eric & Eunice Grant remember this incident and can provide testimony to that effect

III P.D. Dykeman also told Grant that he had a good chance at a rider

IV Grant specifically told P.D. Dykeman that he would only sign the plea agreement if all sentences were to run concurrent. The P.D. referenced to his meeting with the Judge hearing the case and assured Grant that the sentences would not run CONSECUTIVELY. At that point Grant decided to ~~sign~~ sign the plea-agreement.

B. At the time of sentencing, Judge Nafte never mentioned the Rider program and sentenced Grant so that the current charges ran consecutively with his prior charge rather then concurrently.

C. As the State had requested the charges run concurrent and Grant's P.D. had said that the Judge assured him the sentences would run concurrent, Grant feels he was tricked into signing the plea agreement by his attorney.

I There is a strong likelihood Grant would have taken this case to trial had not the P.D. assured both Grant, and Grants parents that a plea agreement would result in a concurrent sentence, at worse case, with a fixed of 4 or 5 years.

II At an evidentiary hearing, Grant and Grant's parents can testify to the false assurances provided by the P.D. in order to obtain Grant's signature on the plea agreement.

9. FIRING PUBLIC DEFENDER DENIED

A. Grant asked this Court to remove P.D. Dykeman from his case prior to signing a plea agreement. This Court denied the request.

I. Grant was ignorant of the fact that he had to verabally state his counsel was defective or that the counsel's actions were prejudicing the case

II From the actions of the P.D. in the latter stages of this case it is apparent that Grant's fears were fully justified.

III As to evidence, Grant can only show that he request P.D. Dykeman be replaced before the Judge.

IV Given an evidenciary hearing Grant would have the opportunity to ask P.D. Dykeman questions to clarify the issue.

10. COUNSEL FAILED TO CALL WITNESSES

A. During the incident of which Grant is currently serving time, there were only three people present. Grant, the victim, and Ashley Gulgelman. Gulgelman should have been called as a witness because;

I She would have testified that the actual events were different then claimed by the victim

II She would have testified that the investigating officers were

not interested in hearing information that did not agree with the victims claims

III She would have testified as to the character of the victim and how the victim's familial ties with local law enforcement biased the case.

B. P.D. Dykeman hired a private investigator (P.I.) who could have testified to the following:

I The investigating officers "lost" testimony that did not support the victim's allegations

II That there was additional evidence not provided to the court.

Conclusion

Because of Grant's status as an incarcerated individual, it is almost impossible for him to present evidence in a form acceptable to this Court.

That is why Grant requested court-appointed counsel to help him prepare for an evidenciary hearing as, Grant is;

I Fairly ignorant of the law and evidentiary requirements

II Cannot go and collect paperwork and testimony in person

III Is unsure of what evidence this Court would consider important and pertinent

IV And is unable to properly write up a response that is adequate and up to the high standards this Court is accustomed to.

Therefore Grant requests that this Court grant him a Court appointed attorney and schedule an evidentiary hearing so what evidence Grant has can be presented to this Court in a proper and meaningful manner.

Furthermore Grant requests that this P.C.R not be dismissed ~~at~~ at this time as Grant feels that he can provide enough meaningful information for this P.C.R. to proceed

Dated this 29 of March 2011

*Woodrow Grant

Grant, Woodrow # 80692

I, Woodrow Grant, state that all the allegations set forth in the foregoing PETITIONER'S RESPONSE are true and correct to the best of my knowlege

x Woodrow Grant
Woodrow Grant # 80692

NOTARY PUBLIC

State of Idaho
County of Ada
I, Andrea L. Blades. certify that
Woodrow J. Grant signed the foregoing document willingly and freely in my presence and that the signature is genuinely his/hers.
Woodrow Grant
Signature of Affiant (& address if necessary)
Subscribed and sworn to before me this 31 day of March
20 11 by Woodrow J. Grant
Andrea L Blades
Notary Signature
03/04/2016
Commission Expires

ANDREA L. BLADES NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF MAILING

On this 29th of March I mailed true and correct copies of my PETITIONER'S RESPONSE ; MOTION TO AMEND to the following parties & via the U.S.P.S.

COURT CLERK
624 E. Center
POCATELLO ID
83201

BANNOCK CO PROSECUTOR
624 E Center
POCATELLO ID
83201

Dated this 29th day of March, 2011

WOODROW J. GRANT
80692, ISCI / 15A-20B
P.O. Box 14
Boise, ID 83707

Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

oOo

WOODROW J. GRANT, Petitioner, -vs- STATE OF IDAHO, Respondent.	Case No. CV 2011-759-PC MOTION FOR LEAVE TO AMEND PETITION FOR POST-CONVICTION RELIEF

COMES NOW, WOODROW J. GRANT, Petitioner pro se, in the above-captioned cause, who pursuant to Rule 15, of the Idaho Rules of Civil Procedure, seeks leave to amend the current Petition for Post-Conviction Relief that is presently before this District Court for its consideration based upon the foregoing reasons.

HISTORY OF ACTION

Petitioner filed before this Court a pro se Petition for Post-Conviction Relief with a Affidavit In Support via "Mail Box Rule" on February 9, 2011. This Court upon receiving said petition conducted an initial review of the Petition and pursuant to I.C. 19-4906(b) issued a Sua Sponte Notice of Intent to Dismiss the Petition for Post-Conviction Relief.

Petitioner then on March 31, 2011, via "Mail Box Rule" submitted a Motion to Amend Petition for Post-Conviction Relief, one page, and Petitioner's Response to Courts Notice of Intent to Dismiss.

APPLICABLE LEGAL STANDARD

Idaho Code 19-4906 of the Uniform Post-Conviction Relief Act authorizes the District Court to permit Amendment of the Petition for Post-Conviction Relief. See: Parsons v. State, 113 Idaho 421, 426, 745 P.2d 305 (Ct.App. 1987), and is appropriate in doing so when the District Court has issued a Notice of Intent to Dismiss the petition for post-conviction relief.

GROUND TO AMEND

Petitioner is not trained in the science of law and is only able to file the pending matter with the assistance of another inmate who has experience in these matters that are presently before the District Court and prison policy permits such legal assistance from other inmates.

Petitioner filed the pending matters before the District Court while housed at the Idaho Correctional Center (ICC) and then was transferred just after the receipt of the District Court's Notice of Intent to Dismiss and then submitted on March 31, 2011, the Motion to Amend Petition for Post-Conviction Relief and Petitioner's Response to Court's Notice of Intent To Dismiss.

Petitioner seeks leave to amend the petition that is presently before the District Court so as to cure any and all defects in the current petition and attempt to overcome this Court's Notice of Intent to Dismiss with a First Amended Petition for Post-Conviction Relief and First Affidavit of Facts in Support of First Amended Petition for Post-Conviction Relief along with other pleadings to further the petitioner in defeating this Court's Notice of Intent to Dismiss.

Petitioner seeks FORTY-FIVE (45) days from the date of this Court's Order to Submit the First Amended Petition for Post-Conviction Relief along with any other supporting pleadings that petition may want this court to consider if this Motion

CONCLUSION

For the reasons set forth in this Motion for Leave to Amend Petition for Post-Conviction Relief petitioner requests that that this Court grant him leave to amend and for any other relief that may be permitted by law.

Respectfully submitted this APRIL 28, 2011.

Woodrow Grant

Woodrow J. Grant, Petitioner

VERIFICATION

STATE OF IDAHO)
ss.
County of ADA)

WOODROW J. GRANT, being sworn under oath deposes and says:

I am the petitioner in the above-entitled matter, and that all statements are true and correct to the best of my knowledge and belief.

Woodrow Grant

Woodrow J. Grant, Petitioner

SUBSCRIBED, SWORN and AFFIRMED to before me this APRIL 28, 2011.

ANDREA L. BLADES NOTARY PUBLIC STATE OF IDAHO

Andrea L Blades

Notary Public for Idaho
Commission expires: 03/04/2016

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on **APRIL** 28, **2011**, I mailed a copy of this MOTION FOR LEAVE TO AMEND 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 for processing to the U.S. mail system to:

BANNOCK COUNTY PROSECUTING ATTORNEY
624 E. Center
Pocatello, ID 83201

Woodrow Grant

Woodrow J. Grant, Petitioner

WOODROW GRANT
80692, ISCI Unit-13
Post Office Box 14
Boise, Idaho 83707

Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUUDIDIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

o0o

WOODROW GRANT, Petitioner, -vs- STATE OF IDAHO, Respondent.	**Case No. CV-2011-759-PC** **MOTION TO ALTER OR AMEND OR RECONSIDER ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF**

COMES NOW, Woodrow Grant, Petitioner **pro se**, in the above-captioned matter, who in accordance with **Rule 59(e), 60(b), and 11(a)(2)(B), I.R.C.P.**, brings forth this Motion to Alter or Amend or Reconsider the district court's May 11, 2011, Order Dismissing Petition for Post-Conviction Relief, for the reasons set forth more fully below.

LEGAL STANDARD

Petitioner's motion to alter or amend the judgment is brought pursuant to Rules 59(e), 60(b) and 11(a)(2)(B) of the Idaho Rules of Civil Procedure. Rule 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than fourteen (14) days after entry of the judgment." In this case, the Court's Order dismissing Petition for Post-Conviction Relief was filed May 11, 2011, and the petitioner received it via U.S. Mail at the ISCI Facility where petitioner is housed on May 13, 2011. This motion is therefore

per the "MAIL BOX RULE" for petitioner delivered it to prison officials for the purposes of mailing to the Court Clerk on **MAY** 24th, **2011.** See: Hayes v. State, 143 Idaho 88, 91, 137 P.3d 475, 478 (Ct. App.2006).

A review of appellate case law suggests that Rule 59(e), 60(b), and 11(a)(2)(B), have all been used to challenge a district court's dismissal of a petition for post-conviction relief. See: Lee v. State, 122 Idaho 196, 832 P.2d 1131 (1992) (appellant filed a motion to alter or amend the judgment pursuant to I.R.C.P. 59(e) following the Court's Order denying the petitioner's petition for post-conviction relief.); Eby v. State, 148 Idaho 731, 228 P.3d 998, 1004 (2010) (holding that relief pursuant to Rule 60(b)(6) may be appropriate for dismissal of post-conviction relief action pursuant to I.R.C.P. 60(b)(6) upon a showing of "unique and compelling circumstances"); Freeman v. State, 122 Idaho 627, 628, 836 P.2d 1088, 1089 (Ct. App. 1992) (in dicta - "The time for filing the appeal, however, was extended by the filing of Freeman's motion to reconsider the dismissal which was timely filed within fourteen days of the order to be reconsidered. I.R.C.P. 11(a)(2)(B); I.C.R. 57(b); I.A.R. 14.").

The decision to grant or deny a motion for reconsideration is squarely within the court's discretion. Puckett v. Verska, 144 Idaho 161, 159 P.3d 937 (2007). Abuse of discretion is determined by a three part test which asks whether the district court "(1) correctly perceived the issue as one of discretion; (2) acted wtihin the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason." Straub v. Smith, 145 Idaho 65, 175 P.3d 754, 760 (2007) (quoting Sun Valley

Potato Growers, Inc. v. Texas Refinery Corp., 139 Idaho 761, 765, 86 P.3d 475, 479 (2004)) (citing Jordan v. Beeks, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001)).

A rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact. Couer d'Alene Mining Co. v. First Nat. Bank of North Idaho, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990). Indeed, chief virtue of reconsideration is to obtain a full and complete presentation of all available facts, so that the truth may be ascertained, and justice is done. Id.

A motion for reconsideration need not present new evidence but may be based upon an argument that the legal conclusion reached were incorrect or that the Court did not consider relevant facts. Id. See also Johnson v. Lambros, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct.App. 2006).

GROUNDS TO ALTER OR AMEND OR RECONSIDER ORDER

A. Introduction

After careful review of this Court's Order dismissing Mr. Grant's petition for post-conviction relief. This Court, within its May 11, 2011, Order set forth a list of reasons as to why it was dismissing Mr. Grant's petition by stating he "failed to provide enough material facts in order to substantiate all of the ten claims he set forth within the petition".

This court further stated an "Analysis" and "Notice of Deficiencies" with a "Discussion" specifically pointing Mr. Grant failed to provide the Court with any new information after giving its Notice of Intent to Dismiss on March 17, 2011, pursuant to § 19-4906(b). Petitioner on May 5, 2011, had submitted a Motion for Leave to Amend Petition for Post-Conviction Relief in

order to properly cure any and all defects in the current petition and attempt to overcome this Court's Notice of Intent to Dismiss with a First Amended Petition for Post-Conviction Relief and First Affidavit of Facts in Support of First Amended Petition for Post-Conviction Relief. This Court denied this Motion on May 13, 2011, two days after this Court's Order of Summary Dismissal of the Petition for Post-Conviction Relief.

B. Summary Dismissal Standard

A Petition for Post-Conviction Relief is separate and distinct from underlying criminal actions which led to the petitioner's conviction. Peltier v. State, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). It is a civil proceeding governed by the **Uniform Post-Conviction Procedure Act** (hereinafter, **UPCA**) (Idaho Code §§ 19-4901 - 4911) and the Idaho Rules of Civil Procedure. Peltier, 119 Idaho at 456, 808 P.2d at 375. Because it is a civil proceeding, the petitioner must prove his allegations by a perponderance of the evidence. Matinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 491 (Ct.App. 1995). However, the petitioner initiating post-conviction proceeding differs from the complaint initiating a civil action. A post-conviction petition is required to include more than "a short plain statement of the claim"; it "must be verified with respect to the facts within the personal knowledge of the applicant, and affidavits, records or evidence supporting it allegations must be attached, or the application must state why such supporting evidence is not attached." **Id.** 19-4903. "In other words, the application must present or be accompanied by admissible evidence supporting the allegations, or the application will be subject to dismissal." Small v. State, 132 Idaho 327, 331, 971 P.2d 1151 (Ct.App. 1998).

If the petitioner presents some shred of evidentiary support of his allegations, the district court must take the petitioner's allegations as true at least until such time as they are controverted by the state. Tramel v. State, 92 Idaho 643, 646, 448 P.2d 649, 652 (1986). this is so even if the allegations appear incredible on their fact. **Id.** Thus only after the State controverts the petitioner's allegations can the district court consider the evidence. Drapeau v. State, 103 Idaho 612, 651 P.2d 546 (Ct.App. 1982). But in doing so, it must still liberally construe the facts and draw reasonable inferences in favor of the petitioner. Small, 132 Idaho 917, 971 P.2d at 1155.

If a question of material fact is presented, the district court **must** conduct an evidentiary hearing to resolve that question. Small, 132 Idaho at 331, 971 P.2d at 1155. If there is no question of fact, and the state is entitled to judgment as a matter of law, dismissal can be ordered sua sponte, or pursuant to the State's Motion. **I.C. § 19-4906(b), (c).**

C. DISCUSSION

Mr. Grant had raised several ineffective assistance of counsel claims within his petition for post-conviction relief. As such, Mr. Grant hereby sets forth his claims in a more clearer fashion in order for this Court to properly reconsider its May 11, 2011, order and if so issue an order altering and amending said order, along with new additional facts.

Claim One: Trial Counsel Ineffectiveness. Trial Counsel, Douglas Dykman, was ineffective in representing Mr. Grant. As a result, Mr. Grant's right to effective assistance of counsel under the "right to counsel" clause of the Sixth Amendment of the Constitution of the United States was violated, and via the Fourteenth Amendment "due process of law" clause, in violation of the

"right to counsel" clause of Art. I, Sec. 13 of the Constitution of the State of Idaho. See: Strickland v. Washington, 466 U.S. 688 (1984); among others. This claim is based specifically on Mr. Grant's trial counsel's failure to represent him as follows:

a) Trial Counsel failed to disqualify Judge;

b) Trial Counsel failed to file motion for change of venue;

c) Mr. Grant was denied Conflict-Free Counsel;

d) Trial Counsel coerced Mr. Grant to plead guilty;

e) Trial Counsel failed to have the Doctor who performed the Mental Health Evaluation at the sentencing hearing to offer mitigating evidence at the sentencing hearing;

f) Trial Counsel failed to bring forth at sentencing a witness to offer mitigating testimony at the sentencing hearing.

In regards to the Six (6) claims above, Mr. Grant already presented in the original petition for post-conviction relief, Mr. Grant hereby sets forth new and additional facts in a more comprehensive presentation of both law and fact in order for this Court to reconsider its May 11, 2011, for the legal conclusions reached were incorrect based upon relevant facts.

DISCUSSION OF CLAIMS

1. Mr. Grant's Trial Counsel was ineffective for failing to disqualify the Judge and motion for change in venue.

i. facts pertaining to claims

While Mr. Grant was being held in the Bannock County Jail ("BCJ") he was appointed an attorney, Douglas Dykman, to represent him.

Upon Dykman being appointed to represent Mr. Grant, counsel came to the BCJ and visited him in November 2009. Mr. Grant communicated to Counsel at that time he wished to have Judge Naftz disqualified and a motion for change

of venue be filed.

Mr. Grant explained to counsel the reason that he wished to have Judge Naftz disqualifed was due to the fact that he had once represented his brother, Chet Grant, in a felony case and Mr. Grant did not want Judge Naftz opinon of his brother when he represented him to have any inferences that may be negative towards him as such. This request to disqualify the Judge was without cause as well.

Mr. Grant further requested that a motion for change in venue be filed due to the domestic abuse charge involved the daughter of the secretary of the Pocatello Police Chief. Mr. Grant felt that with the victims mother's employment would have undue influence with the Court due to her direct involvement with law enforcement and the court's.

Mr. Dykman refused to do either of these requests by stating to Mr. Grant, "I'm not going to do this and it won't get us anywhere." and refused to file the motion to disqualify the Judge. Counsel further stated in respects to the motion for change in venue by stating, "I will not put in a motion for change of venue because it won't help at all." or words to that effect.

ii. why relief should be granted

Mr. Grant would contend that despite the district court's reasoning in the May 11, 2011, Order, regarding the disqualification of Judge. At the time of Mr. Grant's request the rule to disqualify without cause was in effect. It is not for trial counsel to question as to why Mr. Grant wanted to disqualify the Judge. Mr. Grant should have been entitled to the disqualification motion to be filed by counsel. It is not a strategic nor a tactile decision for Counsel to make. He should have just done as requested for Mr. Grant was

entitled under due process of law to disqualify one Judge without cause as the Rule allows under Idaho criminal Rules.

As to change of venue, Mr. Grant contends that it was proper for counsel to file this motion at the least, and demonstrate for the record the relationship of the victim and the victim's mother and place of employment in order to demonstrate undue prejudice in taking the matter to tiral in Bannock County opposed to another count. If at the least, the motion is filed and if denied then Mr. Grant has the due process right to appeal that decision after being convicted and sentenced if he so chooses to in a Direct Appeal.

Secondly, Mr. Grant at the time of these two requests was invoking his right to a Jury Trial. As such, it would have been proper for counsel to at least file both motion and support them with the grounds that Mr. Grant had provided in order to preserve the matter for appeal. As to the motion for disqualification, Counsel should have filed it immediately without cause and it would have been granted and the case would have been reassigned by the Administrative Judge of the Sixth District.

2. **Mr. Grant was denied his Sixth Amendment Right to conflict-free Counsel during the Trial Court proceedings.**

i. **facts pertaining to claim**

Mr. Grant while being housed in the BCJ was visited by counsel several times during the pre-trial stages of his case. Counsel durring these visits had continually attempted to get Mr. Grant to accept a non-binding plea bargin offer to the new charges of domestic battery and the possession of a controlled substance charges. These offers only consisted of non-binding plea agreements in which Mr. Grant was opposed to the offers and would refuse them each and every time for he wanted a binding Rule 11 plea agreement. This was

due to the fact Mr. Grant was affraid if he did not get a binding Rule 11 plea agreement the sentencing court would make his new charges consecutive to the felony charges he was on probation for at the time of his arrest on these two new charges. Counsel kept telling Mr. Grant if he did not accept the plea offer he would get 15 years if he went to trial and it could be consecutive to the charge he was currently on probation for.

In April or May 2010, at a pre-trial conference before the district court, Mr. Grant verbally motioned the court for new counsel to represent him for there was a breakdown in communication. Counsel, Douglas Dykman, also verbally motioned the court to be removed and new counsel be appointed to represent Mr. Grant due to the breakdown in communication.

The district court denied both Mr. Grant and Douglas Dykman's request regarding the appointment of new counsel for Mr. Grant by stating that it was in the court's opinion that Mr. Grant had one of the better attorney's to represent him on the matters before the court and ordered Mr. Dykman to continue to represent Mr. Grant despite the fact that there was a known breakdown in communication.

ii. why relief should be granted

The Sixth Amendment to the United States Constitution and Art. I, Sec. 13 of the Idaho Constitution guarantees the the right to counsel. The right to counsel does not necessarily mean a right to the attorney of one's choice. State v. Clark, 115 Idaho 1056, 1058, 772 P.2d 263, 265 (Ct.App.1989). Mere lack of confidence in otherwise competent counsel is not necessarily grounds for substitute counsel in the absence of extraordinary circumstances. State v. McCabe, 101 Idaho 727, 729, 620 P.2d 300, 302 (1980); State v. Peck, 130 Idaho

711, 713, 946 P.2d 1351, 1353 (Ct.App.1997). However, for "good cause" a trial court may, in its discretion, appoint a substitute attorney for an indigent defendant. **I.C. § 19-856;** State v. Clayton, 100 Idaho 896, 897, 606 P.2d 1000, 1001 (1980); Peck, 130 Idaho at 713, 946 P.2d at 1353. The trial court must afford the defendant a **full and fair opportunity** to present the facts and reasons in support of a motion for substitution of counsel after having been made aware of the problems involved. Clayton, 100 Idaho at 898, 606 P.2d at 1002.

Here the district court did conduct some form of a review of this matter, but in Mr. Grant's opinion the district court deprived Mr. Grant of a full and fair opportunity to explain his problems and the court's review of Grant's request for new counsel did not encompass the totality of his claims.

Mr. Grant had expressed that the purpose for substitution of counsel was due to the fact that he and counsel had a breakdown in communication. More specifically, Counsel continually attempted to get Grant to take a plea offer and he would continually refuse for it was not a binding Rule 11 agreement. Counsel was persistant with his efforts regarding this and as a result a breakdown in communication occurred. Counsel even after Mr. Grant had attempted to have new counsel appointed for he wished to fire Mr. Dykman had attempted on his own accord to remove himself as counsel of record for Mr. Grant.

The Idaho Court of Appeals in State v. Lippert, 145 Idaho 586, 593, 181 P.3d 512, 522 (2008) held in remanding his case back to the district court that "[T]he court must make some reasonable, non-suggestive efforts to determine the nature of the defendant's complaints and to apprise itself of

the facts necessary to determine whether the defendant's relationship with his or her appointed attorney has deteriorated to the point that sound discretion requires substitution or even to such an extent that his or her Sixth Amendment right would be violated but for substitution. **145 Idaho at 593, 181 P.3d at 522.** Good cause includes an actual conflict of interest; a complete, irrevocable breakdown of communication; or an irreconcilable conflict which leads to an apparently unjust verdict. **Id.** See Smith v. Lockhart, 923 F.2d 1314, 1320, (8th Cir.1991)(citing cases); McKee v. Harris 649 F.2d 927, 931 (2d Cir.1981).

In United States v. Lott, 310 F.3d 1231, 1250 (10th Cir.2002)(decision sets forth factors to be used in examining constitutional implication of a total breakdown in communication: (1) whether the defendant's motion for new counsel was timely; (2) whether the trial court adequately inquired into defendant's reasons for making the motion; (3) whether the defendant-attorney conflict was so great that it led to a total lack of communication precluding an adequate defense; and (4) whether the defendant substantially and unreasonably contributed to the communication breakdown); State v. Torres, 208 Ariz. 340, 93 P.3d 1056, 1060-61 (2004); State v. Carman, 114 Idaho 791, 793, 760 P.2d 1207, 1209 (Ct.App.1988). If good cause is shown, the defendant is constitutionally entitled to the appointment of new counsel. Vessey, 967 P.2d at 964.

Here, Mr. Grant did not manufacture the conflict of interest. Counsel created it when Mr. Grant informed him that he wished to take the matter to trial unless he would receive a binding Rule 11 plea agreement, thus creating a irreconcilable conflict which leads to an apparently unjust verdict as will

be demonstrated in the next claim being presented.

Based upon the forgoing, Mr. Grant was deprived of conflict free counsel by the district court, and was forced to have an attorney who had already established on the record a conflict in representing Mr. Grant. As a result, the district court denied Mr. Grant's Sixth Amendment Right to conflict free counsel.

3. **Trial Counsel coerced Mr. Grant into pleading guilty.**

i. **facts pertaining to claim**

Mr. Grant hereby incorporates the facts pertaining to the previous claim, and why relief should be granted in respects to said claim regarding conflict free counsel as if restated in its entirety.

After the pre-trial hearing that took place in which Mr. Grant had attempted to remove Mr. Dykman as counsel, and the court denying Mr. Dykman's motion as well. Mr. Dykman had met with Mr. Grant's parents, Eric and Eunice Grant, outside the Courtroom and spoke with them. What Mr. Dykman stated to them at this meeting was repeated to Mr. Grant at a visit he had with his mother, Eunice Grant, at the BCJ.

Eunice Grant informed Mr. Grant that Mr. Dykman had told them that "You need to tell your son that he needs to take the deal or he is probably going to get 15 years fixed. If he does take it the most he will do is 4 years fixed on both new charges ran concurrent with the previous charge" that Mr. Grant was currently on probation for.

As a result of this conversation with Mr. Dykman, both of Mr. Grant's parents came to the BCJ the same day he spoke with them to visit Mr. Grant and informed him of the conversation that took place that day after court. Both of

Mr. Grant's parents told him to take the deal that Mr. Dykman had offered to him for fear of loosing him to prison for 15 years. Mr. Grant informed both parents "NO" regarding taking the plea offer that was conveyed to him by counsel for he knew it was a trick to get him to plead guilty to the domestic battery for it carried 10 years maximum and he wasn't going to take it unless he received a binding Rule 11 Agreement in where the court and the prosecution were bound to see that he only get 4 years concurrent with all other charges.

Several days transpired after Mr. Grant's meeting with his parents and his mother still being upset over the matter began to have bi-polar episodes over the events that took place and caused Mr. Grant to become manically depressed as well.

Upon subpoena Mr. Grant's parent's both can offer testimony to these events as well if the Court so chooses to grant a hearing on these matters.

Mr. Dykman appeared at the BCJ after Mr. Grant's last appearance in court and his last visit with his parents when they conveyed Mr. Dykman's message to them to relay to Mr. Grant. Again, counsel presented to Mr. Grant the same deal, plead guilty to possession and domestic battery and the state would drop possession of a firearm, aggravated assault and the state would also recommend to run all charges concurrent with Mr. Grant's 2005 aggravated batter charge. Counsel also promised Mr. Grant that Judge Naftz assured him that he had no problem with running all charges concurrent, and further counsel assured Mr. Grant that would get no more than 4 years on the possession and domestic charges.

Despite the fact that the plea offer was non-binding counsel had assured Mr. Grant that this was what he would get for a sentence and was the only

reason he opted to take the non-binding plea agreement was based upon counsel's promises and assurances. As a result, Counsel then began to assist Mr. Grant in filing out the the Guilty Plea Questionnaire From. Idaho Criminal Rules Appendix A, April 22, 2010, by telling Mr. Grant specifically what box's to check on the form and what to write on the lines if it required further information.

ii. why relief should be granted

A plea of guilty which is the result of coercion is invalid. Boykin v. Alabama, 395 U.S. 239, 89 S.Ct. 1709 (1969). However, coercion is not limited to threats of physical violence. Many acts far short of physical violence have been asserted constituting coercion. Some of these claims have been successful. As set forth below on the issue of coercion, the Idaho Courts are in open disagreement with the Federal Courts on what constitutes coercions. However, on the basic issue, there is no disagreement.

The Idaho Supreme Court, in Tramel v. State, 92 Idaho 643, 647, 488 P.2d 649, 652 (1968) Justice Spear stated: "Additionally, if at such a hearing the appellant can prove by a perponderance of the evidence that he was, in fact, coerced to change his plea of "not guilty" to one of "guilty"...he is entitled to relief from that conviction. Goff v. State, 91 Idaho 36, 415 P.2d 679 (1966)."

Here, Mr. Grant has first established that counsel was a conflict and was created by the district court when it refused to appoint Mr. Grant new counsel. This in turn with counsel's actions after both, Mr. Grant and counsel, being denied appointment and removal from the case brings Mr. Grant's allegations regarding coercion in his favor. Counsel's failure to pursue

favorable plea negotiations on Mr. Grant's behalf, which was motivated by a conflict of interest, established ineffective assistance of counsel. See Edens v. Hannigan, 87 F.3d 1109 (10th Cir.1996).

Several Circuit Court's have addressed ineffective of assistance of counsel regarding coerced guilty plea's. U.S. V. Giardino 797 F.2d 30 (1st Cir.1986) (trial counsel lied to defendant to induce a guilty plea constitutes ineffective assistance and requires the plea to be set aside); Moore v. U.S., 950 F.2d 656 (10th Cir.1991) (Coerciion by trial counsel or the prosecutor to induce guilty plea renders the plea involuntary). It is clear based on the facts presented herein and previous pleadings on file have substantiated this fact. Furthermore, Key v. United States, 806 F.2d 133, 139 (7th Cir.1986) (defendant must allege terms of promise by counsel; when, where, and by whom such promisis were made and the precise identity of any witnesses tot he promise). Mr. Grant has substantiated this very clearly as well.

Due to counsel having told Mr. Grant if he did not take the deal he would get 15 years fixed has rendered his plea involuntary. This was addressed in Machibroda v. United States, 368 U.S. 487, 82 S.Ct. 510 (1962) (A plea of guilty, if induced by "promises" or threats, which deprive it of the character of a voluntary act "is void and open to collateral attack").

As a result of this Mr. Grant's plea being coerced it is clear that an evidentiary hearing must be held. See Dugan v. United States, 521 F.2d 231, 233 (5th Cir.1975) (allegations accompanied by credible affidavits that raise a substantial inference that an unkept bargain was made warrant an evidentiary hearing; courts should be "liberal in requiring a particular form of affidavit"); U.S. v. Espinoza, 866 F.2d 1067 (9th Cir.1988) (Trial Counsel's

promise that defendant would receive a specific sentence to induce guilty plea required an evidentiary hearing to resolve the claim if ineffectiveness of counsel).

Based upon the foregoing this court should vacate its May 11, 2011, order summarily dismissing Mr. Grant's petition fro post-conviction relief.

4. **Trial Counsel failed to have the Doctor who perfomred the Mental Health Evaluation at the sentencing hearing to offer mitigating evidence at the sentencing hearing.**

i. facts pertaining to claim

At the completion of the district court conducting the guilty plea hearing, the district court ordered a presentence investigation report (PSI) along with a mental health evaluation be done prior to sentencing in order to assist the court in sentencing Mr. Grant.

Mr. Grant met with the Doctor who performed the Mental Health Evaluation three (3) times. The first was to perform several series of tests. Upon completion of the first set of tests the Doctor came back two (2) more times and performed additional interviews with Mr. Grant along with other testing.

At Mr. Grant's third interview and testing session with the Doctor he had inquired from Mr. Grant who his attorney was. Mr. Grant provided Mr. Dykman's name to the Doctor and he instructed Mr. Grant to have his counsel contact him regarding his testing and evaluation in order to inform Counsel that Mr. Grant was an excellent canidate for Mental Health Court.

The Doctor informed Mr. Grant that he based his recommendation for Mental Health Court upon several factors but the one he had informed Mr. Grant of was the fact that he had not been taking his medication for his bi-polar condition.

As result Mr. Grant contacted his mother via phone from the BCJ and asked her to contact Mr. Dykman and come to see him at the BCJ so he could discuss the mental health evaluation issues that the Doctor had discussed with him.

Mr. Dykman came to the BCJ a few days latter and saw Mr. Grant. Mr. Grant then informed counsel then that the Doctor had stated that he was a good canidate for mental health court and had asked him to contact the Doctor to confer with him on this very important matter. Counsel told Mr. Grant at the meeting "That's good news but the prosecution would have to go for it and they never would." or words to that effect.

Mr. Grant then requested Counsel to have the Doctor at the sentencing hearing to offer further testimony in regards to his evaluation and his recommendation so that it was fully explained to the court and if any question as to the evaluation was to come up by the prosecution, the court or Mr. Grant's counsel it would be able to be answered without just guessing what the Doctor intended his meaning to be.

ii. why relief should be granted

Mr. Grant has clearly set forth more facts for this court to reconsider its previous decision regarding this matter. As such, it is clear that despite what the district court stated in regards to this matter the district court only looked to the Guilty Plea Questionnaire form when the plea was taken and not the sentencing hearing.

Despite this fact. Mr. Grant has offered new and additional facts in a more comprehensive presentation of facts shows that the court's May 11, 2011 decision regarding this matter was incorrect.

It is clear that there is issues presented herein that require an evidentiary hearing for there are facts in dispute regarding this matter due to Mr. Grant's communication with counsel prior to the sentencing hearing. As such, this court should vacate its May 11, 2011, order and hold further proceedings in line with this Motion.

Trial Counsel's failure to introduce evidence in the accused's favor during sentencing hearing constituted ineffective assistance of counsel.See Williams v. Taylor, 529 U.S. 362 (2001); Austin v. Bell, 125 F.3d 843 (6th Cir.1997).

5. **Trial Counsel failed to bring forth at sentencing a witness to offer mitigating testimony at the sentencing hearing.**

i. facts pertaining to claim

Upon Mr. Dykman being appointed to represent Mr. Grant, counsel had obtained an Investigator by Motion and Order of the Court. Ths was due to the fact that counsel could not find any Police Report from any witnesses, and Ashley gulgeman was the only witness to what had occurred.

The Investigator that Counsel obtained had conducted an investigation into the charges that Mr. Grant was facing. As a result the Investigator had located a key witness, Ashley Gulgelman, who was the **only** witness to the domestic batter charge.

It was discovered by the investigator had discovered that 90% of the vitcims statement to the police was fabricated and embelished, and that Det. Oak had actually conducted an interview with Gulgleman and intentionally lost and/or misplaced the Police Report which was exculpatory evidence. Mr. Dykman did not press this issue at all.

Counsel told Mr. Grant that based upon the Investigator's findings regarding the actual events that took place in regards to the domestic battery charge he was going to have Ashly Gulgleman at his sentencing hearing in order to offer mitigating evidence to the case. Counsel further stated that this would benefit him, as well as aid in possibly being placed in mental health court and probation. Counsel failed to have her present at the sentencing hearing and as a result caused me prejudice.

ii. why relief should be granted

The substantive federal law is well-established. Under Strickland v. Washington, 466 U.S. 668 (1984), Mr. Grant must demonstrate both that his counsel's representation was deficient, i.e., that it fell below an objective standard of resonableness," and that the deficiency was prejudicial. Strickland, 466 U.S at 687-88, 692. To show prejudice, Mr. Grant must only demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would undermine the confidence in the outcome." Id. at 694.

Once Mr. Grant has alleged facts which if true would constitute deficient performance the legal presumption dissolves. Therefore, Mr. Grant pleads a **prima facie** showing of ineffective assistance of counsel because it is well-established law that inadequate preparation by defense counsel may violate the Sixth Amendment. State v. Tucker, 97 Idaho 4, 10, 539 P.2d 556, 562 (1975); see also, Pompilla v. Beard, 545 U.S. 374 (2005); Williams v. Taylor, 529 U.S. 362, 396 (2000) (unreasonable failure to conduct through investigation); see also, ABA STANDARDS FOR CRIMINAL JUSTICE, The Defense Function, § 4-4.1 (3d ed. 1993) (emphasis added).

The failure of Counsel to have Ashly Gulgleman at the sentencing hearing to offer mitigating facts before the trial court sentenced him. This failure, in turn, prejudiced Mr. Grant.

CONCLUSION

For the reasons set forth in this Motion to Alter or Amend with new and additional facts as well as argument it is requested that this Court:

1. VACATE its May 11, 2011, Order Dismissing Petition for Post-Conviction Relief;

2. APPOINT counsel to represent petitioner based upon the additional facts and evidence presented herein;

3. FIND that the cumulative impact of counsel's deficiencies prejudiced petitioner. In addition to finding prejudice form individual deficiencies are cumulatively prejudicial;

4. FIND that petitioner's sentence was not voluntary and coerced and as a result grant the relief of a new sentence on the Domestic Battery Charge of seven years, with two years fixed followed by two years indeterminate, and on the possession charge a sentence of seven years with two years fixed, followed by five years indeterminate to run **concurrent** with CR-2005-10583-FE; suspend said sentence and place Mr. Grant in Mental Health Court;

5. GRANT any further relief as this court may deem just and proper as allowed by law.

Respectfully submitted this **MAY** 24th, 2011.

Woodrow Grant

Woodrow Grant, Petitioner

VERIFICATION

STATE OF IDAHO)
: ss.
County of ADA)

WOODROW GRANT, being sworn under oath deposes and says, that he is the Petitioner in the in the above-entitled motion and has read the foregoing, and that all statements are true and correct to the best of his knowledge and belief, and is an Affidavit in and of itself.

Woodrow Grant

Woodrow Grant

SUBSCRIBED, SWORN and AFFIRMED to me MAY 24, 2011.

ANDREA L. BLADES NOTARY PUBLIC STATE OF IDAHO

Andrea L Blades

Notary Public for Idaho
Commission expires: 03/04/2016

CERTIFICATE OF SERVICE

I hereby certify that on **MAY** 24, **2011**, I deposited an original of the forgoing in the Prison Legal Mail System to be filed with the Court and true and correct copies to be served as well via U.S. Mail postage prepaid to:

Mark L. Hiedeman
Bannock County Prosecuting Attorney
624 E. Center, Rm. 220
Pocatello, ID 83201

Woodrow Grant

Woodrow Grant, Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	)	**Case No. CV-2011-759-PC** **ORDER DISMISSING PETITION FOR POST CONVICTION RELIEF**

FACTUAL AND PROCEDURAL BACKGROUND

This case comes before this Court on a Petition for Post Conviction Relief filed by Woodrow Grant ("the Petitioner" or "Mr. Grant"). On March 17, 2011, pursuant to Idaho Code ("IC") §19-4906 this Court issued a Notice of Intent to Dismiss ("Notice") Mr. Grant's petition, indicating its intent to dismiss each of the claims raised and providing Mr. Grant the 20 days required by statute to submit a reply appropriately addressing his arguments and providing satisfactory evidence that he is entitled to post conviction relief.

On April 4, 2011, the Petitioner submitted a Motion to Amend Petition for Post-Conviction Relief, wherein the Petitioner requested this Court "review the underlying criminal records including, but not limited to the county jail's records during defendant's stay there, the psych-evaluation, and the past and current medical records including mental health files." (Mot. to Amend Petition for Post-Conviction Relief, April 4, 2011, 1.) Along with that motion, Mr. Grant also submitted the Petitioner's Response to Court's Notice of Intent to Dismiss, which did not include any additional documents or affidavits. Nor did his response include information not previously

considered and addressed by this Court in its Notice of Intent to Dismiss. The State filed nothing in response. Further background on this matter was set out in detail in the Notice and is incorporated herein by reference.[1]

This Court is fully briefed in the Petitioner's allegations and the law. Furthermore, this Court has carefully reviewed the Petitioner's Motion to Amend Petition for Post-Conviction Relief, as well as the Petitioner's Response to Court's Notice of Intent to Dismiss. Based upon the following discussion, this Court hereby DIMISSES the Petition for Post Conviction Relief.

ISSUES

1. Whether to grant the Motion for Appointment of Counsel.
2. Whether to grant the Petition for Post Conviction Relief.

DISCUSSION

In his Response to Court's Notice of Intent to Dismiss, Mr. Grant again requested the appointment of counsel, stating: "Grant is currently incarcerated and cannot gather the records and evidence which he wanted to be put on record." (Petitioner's Response to Court's Notice of Intent to Dismiss ("Petitioner's Response"), April 4, 2011, 1.) Mr. Grant further argued "he doesn't have the ability or legal knowledge to represent himself personally to the standards this Court is accustomed to." (*Id.*) The Petitioner additionally re-alleged the claims of ineffective assistance of counsel previously addressed by this Court in the Notice of Intent to Dismiss.

[1] The Notice also contains a thorough analysis of the Post-Conviction Relief statute and is not repeated in detail here.

1. Motion for Appointment of Counsel

a. Standard of Review

A request for appointment of counsel in a post conviction proceeding is governed by Idaho Code ("IC") § 19-4904[2], which provides that a court-appointed attorney may be made available to an applicant who is unable to pay the costs of representation. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court. *Id.* (citing *Fox v. State*, 129 Idaho 881, 934 P.2d 947 (Idaho Ct.App. 1997)). When a district court is presented with a request for appointed counsel, the court will address that request before ruling on the substantive issues in the case. *Id.*

Under IC § 19-4904, the court "should determine if the petitioner is able to afford counsel and whether this is a situation in which counsel should be appointed to assist the petitioner." *Id.* at 793, 102 P.3d at 1112. In making this analysis, the court considers the typical problems with pro se pleadings, such as the fact that these types of pleadings are often conclusory and incomplete and that facts sufficient to state a claim may not be alleged because the pro se petitioner does not know what they may be. *Id.* (citing *Brown v. State*, 135 Idaho 676, 23 P.3d 138 (2001)). The court must examine the record to determine "whether the facts are such that they justify the appointment of counsel." *Id.* at 794, 102 P.3d at 1113. In doing so, every

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[2] **§ 19-4904. Inability to pay costs.**
If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, witness fees and expenses, and legal services, these costs and expenses, and a court-appointed attorney may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed.

inference must run in the petitioner's favor where the petitioner is unrepresented and cannot be expected to know how to allege the necessary facts. *Id.* At a minimum, the court "must carefully consider the request for counsel, before reaching a decision on the substantive merits of the petition." *Id.*

If, after examining a petitioner's claims, the court determines that such claims are frivolous, "it is essential that the petitioner be given adequate notice of the claimed defects so he has an opportunity to respond." *Id.* at 793, 102 P.3d at 1112. If the petitioner alleges facts that raise the possibility of a valid claim, the court should appoint counsel in order to give the petitioner an opportunity, working with counsel, to properly allege the necessary supporting facts. *Id.*; *see also*, *Newman v. State*, 140 Idaho 491, 493, 95 P.3d 642, 644 (Idaho Ct.App. 2004) (Although the petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims, he should be provided with a meaningful opportunity to supplement the record and to renew his request for court-appointed counsel prior to the dismissal of his petition where he has alleged facts supporting some elements of a valid claim.). The court "should provide sufficient information regarding the basis for its ruling to enable the petitioner to supplement the request with the necessary additional facts, if they exist." *Id.*

"[A] district court presented with a request for appointed counsel in a post-conviction action must address that request before ruling on the substantive issues in the case and errs if it denies a petition on the merits before ruling on the applicant's request for counsel." *Judd v. State*, 148 Idaho 22, 218 P.3d 1, 2 (Idaho Ct.App. 2009).

However,

> an order that simultaneously dismisses a post-conviction action and denies a motion for appointment of counsel will be upheld on appeal if the petitioner received notice of the fatal deficiencies of the petition and if, when the standard governing a motion for appointment of counsel is correctly applied, the request for counsel would properly be denied - that is, when the petitioner did not allege facts raising even the possibility of a valid claim.

Id. at 4. A determination regarding a request for the appointment of counsel and a determination regarding whether a petition for post conviction relief is subject to summary dismissal are thus governed by "quite different standards, with the threshold showing that is necessary in order to gain appointment of counsel being considerably lower than that which is necessary to avoid summary dismissal of a petition." *Id.*

b. Analysis

This Court must examine the petition to determine whether the facts alleged justify the appointment of counsel. If such facts appear to this Court to be frivolous, or the situation presented does not appear to be one in which counsel should be appointed to assist the Petitioner, this Court may deny the request for counsel.

Based on the following findings, this Court hereby DENIES the Petitioner's Motion for Appointment of Counsel, as the allegations made by the Petitioner are frivolous for the reasons stated herein. Furthermore, this Court finds the Petitioner did not allege facts raising even the possibility of a valid claim. Therefore, the appointment of counsel is not required.

2. Notice of Deficiencies

a. Standard of Review

In *Charboneau v. State*, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007), the Idaho Supreme Court set forth this thorough and clear statement of the legal standard that applies to a petition for post conviction relief:

> An application for post-conviction relief under the Uniform Post Conviction Procedure Act (UPCPA) is civil in nature. *Stuart v. State*, 136 Idaho 490, 495, 36 P.3d 1278, 1282 (2001). Like a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24, 995 P.2d 794 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*
>
> Summary disposition of a petition for post-conviction relief is appropriate if the applicant's evidence raises no genuine issue of material fact. I.C. § 19-4906(b), (c). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party. *Gilpin-Grubb v. State*, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002), *citing* *LaBelle v. State*, 130 Idaho 115, 118, 937 P.2d 427, 430 (Ct.App.1997). A court is required to accept the petitioner's unrebutted allegations as true, but need not accept the petitioner's conclusions. *Ferrier v. State*, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001). When the alleged facts, even if true, would not entitle the applicant to relief, the trial court may dismiss the application without holding an evidentiary hearing. *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990), *citing* *Cooper v. State*, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law. *Id.*

"On appeal from a summary disposition, [the Court of Appeals] exercises free review. *Yon v. State,* 124 Idaho 821, 822, 864 P.2d 659, 660 (Ct.App.1993); *Hoover v. State,* 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.App.1988)." *Abbott v. State*, 129 Idaho 381, 382, 924 P.2d 1225, 1228 (Idaho Ct.App. 1996).

DISCUSSION

As explained, Mr. Grant's Response to the Court's Notice of Intent to Dismiss concerns the alleged failure of his counsel to adequately represent him. The Petitioner did not raise any arguments not already addressed by this Court; nor did the Petitioner provide this Court with any new information. The Petitioner set forth ten grounds in support of his claim of ineffective assistance of counsel. This Court will address each in turn.

a. Standard of Review Governing a Claim of Ineffective Assistance of Counsel

"In order to establish a violation of the constitutional guarantee to effective assistance of counsel, the defendant must show *both* deficient performance and resulting prejudice." *Beasley v. State*, 126 Idaho 356, 359, 883 P.2d 714, 717 (Idaho Ct.App. 1994) (internal citations omitted). The test for evaluating whether a criminal defendant has received the effective assistance of counsel is two-pronged and requires that the petitioner establish: (1) counsel's conduct was deficient because it fell outside the wide range of professional norms; and (2) the petitioner was prejudiced as a result of the deficient conduct. *Pratt v. State*, 134 Idaho 581, 584, 6 P.3d 831, 834 (2000); *Ray v. State*, 133 Idaho 96, 101, 982 P.2d 931, 936 (1999) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984)). "Facts presented must be in the form of competent, admissible evidence. Bare assertions and speculation,

unsupported by specific facts, do not suffice to show ineffectiveness of counsel." *Roman v. State*, 125 Idaho 644, 649, 873 P.2d 898, 903 (Idaho Ct.App. 1994)(internal citations omitted).

In assessing the reasonableness of attorney performance, counsel is presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Pratt*, 134 Idaho at 584, 6 P.3d at 834; *State v. Matthews*, 133 Idaho 300, 306-07, 986 P.2d 323, 329-30 (1999) (citing *Strickland*, 466 U.S. at 690). Strategic and tactical decisions will not be second guessed or serve as a basis for post conviction relief under a claim of ineffective assistance of counsel unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective review. *Pratt*, 134 Idaho at 584, 6 P.3d at 834; *Giles v. State*, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994), *cert denied* 513 U.S. 1130 (1995). To satisfy the prejudice prong of the *Strickland* test, the applicant must establish that there is a reasonable probability that, absent counsel's unprofessional errors, the outcome of the proceeding would have been different. *Milburn v. State*, 135 Idaho 701, 706, 23 P.3d 775, 780 (Idaho Ct.App. 2000)(citing *Strickland*, 466 U.S. at 694); *Fox v. State*, 125 Idaho 672, 674, 873 P.2d 926, 928 (Idaho Ct.App. 1994). The applicant must show that the attorney's deficient conduct 'so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' *Milburn*, 135 Idaho at 706, 23 P.3d at 780 (quoting *Strickland*, 466 U.S. at 686). The applicant must show actual unreasonable performance by trial counsel and actual prejudice. *Id.* "Hence, dismissal is proper if the applicant fails to meet his burden under either part." *Fox*, 125 Idaho at 674, 873 P.2d at 928; *Roman*, 125 Idaho at 649, 873 P.2d at 903 ("To avoid summary dismissal, a post-

conviction claim of ineffective assistance of counsel must sufficiently allege facts under both prongs of the test.").

b. Analysis

1. Change of venue/Change of judges

The Petitioner again argued his counsel was ineffective by "failing to request a change of venue or the recusal" of the judge. (Petitioner's Response at 2.) As this Court explained in its Notice of Intent to Dismiss, counsel's failure to secure a change of venue or to request a new judge are not appropriate issues for review in a claim of ineffective assistance of counsel. "The reasons for a change of venue, as set forth in Idaho Criminal Rule 21(a) and 21(b)[3], are that a fair and impartial trial cannot be had in the county where the case is pending or that the convenience of the parties and the witnesses would best be served by a change of the venue." *State v. Fee*, 124 Idaho 170, 175, 857 P.2d 649, 654 (Idaho Ct.App. 1993). "[T]he issue of whether a change of venue should be requested is a matter of trial strategy and tactical choice, not subject to review as a claim of ineffective assistance of counsel in the absence of proof of inadequate preparation or ignorance on counsel's part. *State v. Carter*, 103 Idaho 917, 923, 655 P.2d 434, 440 (1982)." *Id.* Likewise, "the decision whether to request the recusal of a trial judge is a strategic matter, one which should be left to the discretion of the attorney. *See* Giles v. State, 125 Idaho 921, 924,

[3] **Rule 21. Change of venue**
(a) For Prejudice. The court upon motion of either party shall transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.
(b) Other Cases. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceedings as to the defendant to another county.

877 P.2d 365, 368 (1994)." *Small v. State*, 132 Idaho 327, 333, 971 P.2d 1151, 1157 (Idaho Ct.App. 1999).

In this case, there is nothing in the record to establish the basis for a change of venue or the recusal of the trial judge, even if such requests had been made. Furthermore, the Petitioner offered nothing more than his own conclusory and bare allegations, unsupported by the record or affidavits. The petition submitted by Mr. Grant does not provide any basis for an objective evaluation regarding his counsel's decisions in relation to a change of venue or a change of judge. The Petitioner did not adequately support his argument that a fair and impartial trial could not be had in Bannock County, or offer any argument that the convenience of the parties and the witnesses would best be served by a change of the venue. Similarly, Mr. Grant did not adequately support his claims regarding the supposed bias of the judge. As such, the failure of the Petitioner's counsel to move for a change of venue and/or the recusal of the judge did not constitute ineffective assistance of counsel since those decisions was clearly a matter of trial strategy and tactical choice. In addition, the Petitioner did not present evidence adequate to satisfy the prejudice prong of the *Strickland* test, as Mr. Grant did not "draw a causal connection between the alleged deficiencies of his attorney's performance and his decision to plead guilty." *Ridgley v. State*, 148 Idaho 671, 677, 227 P.3d 925,931 (2010). Nowhere in his Response, did the Petitioner allege that had his counsel submitted a request for a change of venue and/or the recusal of the judge, that he would have pleaded not guilty. *Id.* As such, this Court finds these claims to be without merit.

2. Counsel did not pursue the option of Mental Health Court

Mr. Grant next restates his argument that his counsel was ineffective in not pursuing the option of participation in the Mental Health Court. (Petitioner's Resp. at 3.) In particular, the Petitioner asserts he "request[ed] his public defender attempt to have this case be referred to the mental health court but as far as Grant can tell, no attempt was made." (*Id.*) However, beyond offering conclusory allegations regarding this contention, the Petitioner again failed to offer any admissible evidence in support of his argument that his counsel was ineffective in failing to have his case transferred to the Mental Health Court. Furthermore, "[w]here the alleged deficiency is counsel's failure to file a motion, a conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the *Strickland* test. Id. at 158-59, 857 P.2d at 637-38." *Fairchild v. State*, 128 Idaho 311, 318, 912 P.2d 679, 686 (Idaho Ct.App. 1996). Mr. Grant did make application to Drug Court, which application was denied. The Petitioner has submitted nothing to indicate his application for Mental Health Court would have been accepted. Furthermore, Mr. Grant has failed to illustrate through his Response sufficient facts to indicate that his counsel was deficient in this regard and he was thereby prejudiced. Additionally, Mr. Grant does not indicate his decision to plead guilty would have been different if his counsel had pursued the option of an alternative court. Furthermore, this Court was well aware of Mr. Grant's mental health history upon sentencing, and the outcome of his case would not have been affected had the Petitioner's attorney made application to the Mental Health Court. As such, this claim cannot result in the requested relief.

3. Counsel was ineffective for failing to protect the Petitioner's interests during the psychological evaluation

Mr. Grant next reasserts his claim that his counsel was ineffective because he failed to advise him of his rights in relation to a psychological evaluation.

It is well-settled that a psychiatric evaluation, performed after the determination of guilt and for the express purpose of sentencing, is not a critical stage for Sixth Amendment purposes. *Hughes v. State*, 148 Idaho 448, 462, 224 P.3d 515, 529 (Idaho Ct.App. 2009). However, while "the majority of courts have held that a pretrial psychiatric examination is not a critical stage", a defendant is entitled to counsel regarding the decision to undergo the examination itself. *Id.* Thus, "a defendant has a Sixth Amendment right to counsel regarding only the decision of whether to submit to a [psychiatric] exam." *Id.* at 455, 224 P.3d at 522. ("The *Estrada* and *Estelle* Courts took pains to distinguish the right to the advice of counsel regarding the examination process from a right to the presence of counsel during the examination process.") In discussing the duties of counsel in regard to a psychiatric evaluation, the Idaho Court of Appeals has further explained: "The advice of counsel during the decisional phase provides the defendant with information as to the examination process as well as the right to refuse examination to avoid self-incrimination. Thus armed, the defendant can adequately proceed through the examination." *Id.* at 456, 224 P.3d at 523.

In this case, Mr. Grant specifically alleged his counsel did not inform him of his right to remain silent in regard to the psychological evaluation. Mr. Grant stated: "P.D. Dykeman should have informed Grant that the mental health examiner was not bound by patient/doctor

privilege and anything said by Grant could and, most likely, would be used against him by the state." (Petitioner's Response at 4.) Mr. Grant further asserted: "The P.D. never informed Grant that he was not even required to participate in the psych-eval. That Grant was not required to provide information against himself even if there was a court order in effect." (*Id.*) However, Mr. Grant has presented no admissible evidence to demonstrate his counsel failed to advise him properly regarding his rights prior to his participation in the psychological examination. Instead, the Petitioner has only set forth unsubstantiated and unverified claims, which can provide no relief under the Uniform Post Conviction Procedure Act. Furthermore, in his Guilty Plea Questionnaire, Mr. Grant clearly indicated he understood his rights, including his right to remain silent even after pleading guilty. Specifically, the Petitioner indicated he understood he had the right to "refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which" he was pleading guilty. (Guilty Plea Questionnaire Form, Idaho Criminal Rules Appendix A, April 22, 2010, 2.) Mr. Grant further indicated he had "sufficient time to discuss" his case with his attorney. (*Id.* at 5.) Furthermore, to the extent the Petitioner claims his rights pursuant to *Estrada v. State* were violated, Mr. Grant indicated his attorney had advised him that he had "a constitutional right not to submit to a court ordered psychosexual evaluation for purposes of sentencing". (*Id.* at 6.) As such, his claim regarding ineffective assistance of counsel in this regard cannot stand.

4. Failure of counsel to submit mitigating evidence

Mr. Grant also reasserted the claim that his counsel failed to present mitigating evidence. (Petitioner's Response at 4.) The Petitioner set forth specific examples of such evidence and also

argued he was not given an opportunity to "state his side to rebut the prosecution's blown-out-of-proportion description of the facts surrounding the incident Grant was involved in." (*Id.* at 5.)

However, there was nothing submitted to this Court that identified any mitigating evidence that might have changed the outcome of these proceedings. *See State v. Wood*, 132 Idaho 88, 97, 967 P.2d 702, 711 (1998) (Because the petitioner failed to submit anything to the court that "identifie[d] any mitigating evidence that might have changed the outcome of these proceedings", the petitioner failed to show ineffective assistance of counsel.). Furthermore, as indicated by his Guilty Plea Questionnaire, the Petitioner had no issues with his attorney and his handling of this case. For example, Mr. Grant answered, "no" to the question of whether there was anything he had requested his attorney to do that had not been done. (Guilty Plea Questionnaire Form at 5.) The Petitioner further stated he had reviewed the evidence in the case with his attorney. (*Id.*) By pleading guilty, Mr. Grant further willingly and knowingly waived his right to confront the witnesses against him, as well as the right to present witnesses and evidence in his defense. (*Id.* at 2.) Moreover, the Petitioner was provided an opportunity to make a statement and comments to this Court during sentencing. As such, the Petitioner has failed to substantiate this claim with the required evidence.

5. Counsel did not explain the Petitioner's appeal rights

Mr. Grant's again argues his counsel was inadequate by failing to explain his appeal rights. (Petitioner's Response at 5.) This Court previously addressed this claim in its Notice of Intent to Dismiss finding Mr. Grant failed to adequately support this allegation. In his Response, Mr. Grant has not offered this Court any additional or even pertinent information regarding this

claim. Mr. Grant recites his opinions regarding the legal duties of public defenders, but offers nothing admissible in support of his allegation that his counsel actually failed to advise him of his rights. The Petitioner did not submit any affidavits or supplementary documents or point to the record in support of this claim. Furthermore, in his Guilty Plea Questionnaire, Mr. Grant indicated he was not waiving his right to appeal the judgment of conviction and sentence. (Guilty Plea Questionnaire Form at 4.)

Thus, Mr. Grant has once again only offered bare, conclusory and unverified allegations unsubstantiated by any admissible evidence. Thus, he has not proven his allegations by a preponderance of the evidence as required by the statutes governing post conviction proceedings, and this claim cannot merit the requested relief. *See Baxter v. State*, 149 Idaho 859, 862, 243 P.3d 675, 678 (Idaho Ct.App. 2010).

6. Counsel failed to protect the Petitioner's interests during the Pre-Sentence Investigation

Mr. Grant also reasserts his previous argument that his counsel failed to protect his rights during the pre-sentence investigation ("PSI"). (Petitioner's Response at 6.) The Petitioner further claims his "mental health issues" prevented him from objecting to the PSI at the time of sentencing. (*Id.*)

As explained in the Notice of Intent to Dismiss, the Idaho Court of Appeals has determined that counsel cannot provide ineffective assistance by failing to advise a client concerning his presentence investigation since a presentence interview is "not a critical stage of the adversarial proceedings . . . ." *Stuart v. State*, 145 Idaho 467, 471, 180 P.3d 506, 510 (Idaho

Ct.App. 2008). "'[I]f the stage is not critical, there can be no constitutional violation, no matter how deficient counsel's performance.' *United States v. Benlian,* 63 F.3d 824, 827 (9th Cir.1995); *see Estrada,* 143 Idaho at 562, 149 P.3d at 837." *Hughes*, 148 Idaho at 452, 224 P.3d at 519. Furthermore, as explained in this Court's Notice, the defendant bears the burden of objecting to a PSI at the time of sentencing. *Cunningham v. State,* 117 Idaho 428, 788 P.2d 243 (Idaho Ct.App. 1990). Although the Petitioner now claims his "mental health issues" prevented him from objecting to the PSI, he does not support that allegation; rather, Mr. Grant merely sets forth unverified and conclusory allegations. This Court cannot grant a Petition for Post Conviction Relief on such bare claims. Therefore, Mr. Grant has not proven this allegation by a preponderance of the evidence as required by the statutes governing post conviction proceedings.

7. Counsel should have recognized and accounted for the Petitioner's mental health issues

Mr. Grant previously argued his counsel was ineffective in failing to recognize the Petitioner's mental health issues and addictive behaviors. In his Response, the Petitioner raises those same arguments and additionally explicitly states that he was incompetent when entering his plea. This Court already addressed these allegations in its Notice of Intent to Dismiss, including Mr. Grant's claim of incompetence.

"The standard to determine competency to stand trial is whether the defendant has 'the capacity to understand the proceedings against him and (2) assist in his defense.'" *Ridgley v. State*, 148 Idaho 671, 678, 227 P.3d 925, 932(2010)(quoting *Dusky v. U.S.*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)).

> In order to find that petitioner's trial counsel was ineffective for refusing to request a ... hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings. In [*Jeter*, 417 S.E.2d at 596], this Court proclaimed that in proving *Strickland* prejudice within the context of counsel's failure to fully investigate the petitioner's mental capacity, "the [petitioner] need only show a 'reasonable probability' that he was ... incompetent at the time of the plea."

Id. Thus, in a post conviction relief action, the petitioner has the burden of proving by a preponderance of the evidence that he was incompetent when he entered his guilty plea. *Id.*(internal citations omitted).

By his Response, Mr. Grant has once again not provided admissible evidence showing that there is a reasonable probability that he was incompetent at the time he entered his plea. Mr. Grant offered nothing more than his own conclusory statements, as well as his own personal opinions. In fact, Mr. Grant admitted that he could only offer this Court "hearsay as he is not a mental health specialist." (Petitioner's Resp. at 7.) The Petitioner's own conclusory and bare assertions alone are not sufficient to survive summary dismissal. Mr. Grant's Response offers nothing more than a mere conclusion that he was not competent to understand the nature of the proceedings and knowingly enter into a guilty plea, and is also unsupported by any facts as to his alleged mental incompetency. Furthermore, in his Guilty Plea Questionnaire, Mr. Grant unequivocally indicated he was able "to make a reasoned and informed decision" in his case. (Guilty Plea Questionnaire Form at 3.) He further stated he had not taken any medications or drugs, or consumed any alcoholic beverages that would affect his ability to make a reasoned and informed decision. (*Id.*) In addition, this Court was well aware of the Petitioner's mental health history, including his current diagnoses and the fact that he was taking prescription medications

for his mental health issues. Without something in the record suggesting that Mr. Grant was incompetent or that an examination would have shown that Mr. Grant was incompetent, there is nothing to satisfy the prejudice prong of *Strickland*, and this claim must also fail.

8. Counsel made false assurances regarding the plea agreement and possible sentence

The Petitioner next re-argues the claim that he was given false assurances regarding his sentence. (*See* Petitioner's Response at 7.)

This Court previously addressed this claim in its Notice of Intent to Dismiss, finding Mr. Grant failed to adequately support this allegation. In his Response, Mr. Grant has not offered this Court any additional admissible information. The Petitioner did not submit any affidavits or supplementary documents or point to the record in support of this claim. Mr. Grant asserted: "As the State had requested the charges run concurrent and Grant's P.D. had said that the Judge assured him the sentences would run concurrent, Grant feels he was tricked into signing the plea agreement by his attorney." (Petitioner's Response at 8.) However, the Petitioner indicated he understood his plea agreement was "non-binding" and that the court "may impose any sentence authorized by law . . ." (Guilty Plea Questionnaire Form at 4.) Mr. Grant specifically acknowledged:

> I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea.

(*Id.*) The Petitioner further indicated he understood that by pleading guilty to more than one crime, the "sentences for each crime could be ordered to be served either concurrently (at the same time) or

consecutively (one after the other)". (*Id.*) Moreover, the Petitioner has not satisfied the prejudice prong of *Strickland* by his arguments. The Idaho Court of Appeals has given the following pertinent explanation regarding counsel's role in the plea process:

> Where, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Griffith v. State*, 121 Idaho 371, 373, 825 P.2d 94, 96 (Ct.App.1992). *See also Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985); *State v. Soto*, 121 Idaho 53, 55, 822 P.2d 572, 574 (Ct.App.1991). When it is asserted that a guilty plea was the product of ineffective assistance, to prove the prejudice prong the defendant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59, 106 S.Ct. 366; *Dunlap v. State*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004).

Nevarez v. State, 145 Idaho 878, 884, 187 P.3d 1253, 1259 (Idaho Ct.App. 2008.) Mr. Grant did not "draw a causal connection between the alleged deficiencies of his attorney's performance and his decision to plead guilty." *Ridgley*, 148 Idaho at 677, 227 P.3d at 931.

Therefore, based on the answers Mr. Grant provided in the Guilty Plea Questionnaire, as well as his failure to put forth admissible evidence, this Court finds the Petitioner's pleas were entered voluntarily and with full awareness of the possible consequences that might follow. Mr. Grant has not provided this Court with any indication that the entry of his guilty pleas was the result of ineffective assistance of counsel. Thus, as Mr. Grant has only offered bare, conclusory and unverified allegations unsubstantiated by any admissible evidence, he has not proven his allegations by a preponderance of the evidence as required by the statutes governing post conviction proceedings, and this claim cannot merit the requested relief.

9. The Petitioner's efforts to fire his court-appointed attorney failed

Mr. Grant next reasserted his allegation that post conviction relief is warranted because he asked this Court to assign him a new public defender, which request was denied. (*See* Petitioner's Response at 8.)

As already stated by this Court in its Notice, the Petitioner makes no claim by this allegation that his counsel was deficient or that he was prejudiced by any alleged deficiency. In his Response, Mr. Grant offered no further documentation or admissible evidence regarding this allegation. Therefore, as already determined by this Court, this contention is not even oriented toward a claim of ineffective assistance of counsel and is therefore not sufficient to support a petition for post conviction relief.

10. Counsel failed to call certain witnesses

Lastly, the Petitioner once again argues his counsel was ineffective for failing to call certain witnesses, including the victim in this matter and the private investigator hired by counsel. (Petitioner's Response at 8.)

The Idaho Court of Appeals has set forth the following succinct explanation regarding the decision to call witnesses:

> It is well settled that the decision whether to call a particular witness is a strategic or tactical decision which will not be second-guessed or serve as a basis for post-conviction relief under an alleged claim of ineffective assistance of counsel unless that decision is shown to have resulted from inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation. Davis v. State, 116 Idaho 401, 775 P.2d 1243 (Ct.App.1989); *see also* State v. McKenney, 101 Idaho 149, 609 P.2d 1140 (1980), *citing* State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975).

Gabourie v. State, 125 Idaho 254, 258, 869 P.2d 571, 575 (Idaho Ct.App. 1994).

The petition submitted by Mr. Grant does not provide any basis for an objective evaluation regarding his counsel's decision whether to call witnesses. Once again, the Petitioner has submitted conclusory statements and presented no admissible evidence to give rise to a genuine issue of material fact as to whether his counsel's performance fell outside the wide range of professional norms. Furthermore, as explained, the decision whether to call a particular witness is clearly a strategic or tactical one. Therefore, his claim of ineffective assistance in this regard also fails.

c. The Petitioner did not adequately support his claims of ineffective assistance

Notwithstanding the preceding discussion, Mr. Grant still failed to show how his counsel's performance fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052. First, Mr. Grant failed to demonstrate that his counsel's performance fell outside the wide range of professional norms, as he offered nothing more than conclusory statements. Mr. Grant did not support his allegations of ineffective assistance with proper documentation or argument. Secondly, even accepting the Petitioner's claim that his counsel was inadequate, the Petitioner still failed to demonstrate prejudice, as he offered no compelling argument that the outcome of his case would have been different but for his attorney's unprofessional errors. Therefore, Mr. Grant's allegation that his counsel was ineffective is no more than a conclusory allegation. "Bare assertions and speculation, unsupported by specific facts, do not suffice to show ineffectiveness of counsel." *Roman*, 125 Idaho at 649, 873 P.2d at

903. As such, the Petitioner's claims of ineffective assistance of counsel are without merit, and his Petition for Post Conviction Relief cannot be granted on such basis.

CONCLUSION

Based on the foregoing, as well as the reasoning set forth in the Notice of Intent to Dismiss, this Court hereby **DISMISSES** the Petition for Post Conviction Relief.

IT IS SO ORDERED.

DATED this 10 day of May, 2011.

Robert C. Naftz

ROBERT C. NAFTZ
DISTRICT JUDGE

Copies to:
Mark L. Hiedeman
Woodrow Grant, IDOC No. 80692

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	)	**Case No. CV-2011-759-PC** **ORDER DENYING MOTION FOR LEAVE TO AMEND PETITION FOR POST-CONVICTION RELIEF**

This case comes before this Court pursuant to a "Motion for Leave to Amend Petition for Post-Conviction Relief" filed by Woodrow Grant ("the Petitioner" or "Mr. Grant").

On March 17, 2011, pursuant to Idaho Code ("IC") §19-4906 this Court issued a Notice of Intent to Dismiss ("Notice") Mr. Grant's Petition for Post Conviction Relief, indicating its intent to dismiss each of the claims raised in the Petition and providing Mr. Grant the 20 days required by statute to submit a suitable reply. On April 4, 2011, the Petitioner submitted a Motion to Amend Petition for Post-Conviction Relief, along with the Petitioner's Response to Court's Notice of Intent to Dismiss. Thereafter, this Court issued an Order Dismissing Petition for Post Conviction Relief. On May 5, 2011, the Petitioner submitted the subject motion seeking to amend his petition in order

> to cure any and all defects in the current petition and attempt to overcome this Court's Notice of Intent to Dismiss with a First Amended Petition for Post-Conviction Relief and First Affidavit of Facts in Support of First Amended Petition for Post-Conviction Relief along with other pleadings to further the petitioner in defeating this Court's Notice of Intent to Dismiss.

(Mot. for Leave to Amend Petition for Post-Conviction Relief, May 5, 2011, 2.)

DISCUSSION

Pursuant to Idaho Code § 19-4906(b)[1], a court may dismiss an application for post conviction relief *sua sponte*. However, "[w]hen a court dismisses an application *sua sponte*, the statute requires the court give the applicant 20-days' notice prior to the proposed dismissal." *Workman v. State*, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007). Thereafter, "[i]n light of the reply, or on default thereof, the court *may* ... grant leave to file an amended application or, direct that the proceedings otherwise continue." IDAHO CODE ANN. § 19-4906(b) (2010)(emphasis added). Thus, the decision whether to grant leave to amend an application for post conviction relief is a discretionary one. As such, this Court is not required to consider the issues presented by an amended petition, even if such amendment is filed prior to the district judge's dismissal. *See Cole v. State*, 135 Idaho 107, 111, 15 P.3d 820, 824(2000).

This Court properly notified the Petitioner of its intention to dismiss his pro se application for Post Conviction Relief for failing to set forth sufficient facts upon which relief could be granted. Pursuant to IC § 19-4906(b), Mr. Grant had 20 days to reply to the proposed dismissal. Mr. Grant submitted a timely response, which included a motion to amend. By his reply, Mr. Grant did include new arguments not previously raised in his original Petition for Post Conviction Relief, which this Court reviewed and addressed. Mr. Grant has now submitted a

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[1] **Idaho Code § 19-4906 states, in part:**
(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

second request to amend his petition. This request was received before this Court issued its Order dismissing the Petition for Post Conviction Relief, but well after the 20 days provided to Mr. Grant to submit a suitable reply. As this Court has now issued its Order Dismissing Petition for Post Conviction Relief, which addressed arguments not previously raised, this Court, in its discretion, sees no need for further amendment. Mr. Grant's second request to amend his petition, filed well after the expiration of his 20 days to respond, is no longer relevant. As such, this Court hereby **DENIES** the Motion for Leave to Amend Petition for Post-Conviction Relief. This Court's recent dismissal of the Petition for Post Conviction Relief stands.

IT IS SO ORDERED.

DATED this 12 day of May, 2011.

Robert C. Naftz

ROBERT C. NAFTZ
DISTRICT JUDGE

Copies to:
Mark L. Hiedeman
Woodrow Grant, IDOC No. 80692

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT, Petitioner, vs. STATE OF IDAHO, Respondent.	)	**Case No. CV-2011-759-PC** **ORDER DENYING MOTION TO ALTER OR AMEND OR RECONSIDER PETITION FOR POST CONVICTION RELIEF**

FACTUAL AND PROCEDURAL BACKGROUND

This case comes before this Court on a "Motion to Alter or Amend or Reconsider Order Dismissing Petition for Post-Conviction Relief" filed by Woodrow Grant ("the Petitioner" or "Mr. Grant"). Mr. Grant is appealing this Court's dismissal of his Petition for Post Conviction Relief, which was issued on or about May 11, 2011. Pursuant to that dismissal, this Court denied the Petition for Post Conviction Relief on the grounds that Mr. Grant "did not raise any arguments not already addressed by this Court; nor did the Petitioner provide this Court with any new information." (Order Dismissing Pet. for Post Conviction Relief, May 11, 2011, 8.) Mr. Grant had made allegations regarding ineffective assistance of counsel, which, after thorough review, this Court found to be frivolous. In addition to finding each of Mr. Grant's ten allegations of ineffective assistance of counsel to be without merit, this Court determined the Petition for Post Conviction Relief must also be denied because Mr. Grant's allegations were conclusory, in violation of the standards governing post conviction proceedings. (*See id.* at 21.)

By his current motion, Mr. Grant is moving this Court to "Alter or Amend or Reconsider" the Order Dismissing Petition for Post Conviction Relief. He is bringing that motion pursuant to Idaho Rules of Civil Procedure 59(e), 60(b), and 11(a)(2)(B). (*See* Mot. to Alter or Amend or Reconsider Order Dismissing Pet. for Post-Conviction Relief, May 27, 2011, ("Mot. to Alter or Amend or Reconsider") 1.) According to Mr. Grant, he has submitted this motion to set "forth his claims [regarding ineffective assistance of counsel] in a more clearer fashion in order for this Court to properly reconsider its May 11, 2011, order and if so issue an order altering and amending said order, along with new additional facts." (*Id.* at 5.)

After being fully briefed in the Petitioner's allegations and the law, and, after careful review of the Petitioner's Motion to Alter or Amend or Reconsider Order Dismissing Petition for Post-Conviction Relief, this Court hereby issues the following Order DENYING the Petitioner's motion.

ISSUE

1. Whether to grant the Petitioner's Motion to Alter or Amend or Reconsider.

STANDARD OF REVIEW

"It is well established that an action under the Uniform Post-Conviction Procedure Act is civil in nature and that the Idaho Rules of Civil Procedure [IRCP] are applicable in such a proceeding. State v. Goodrich, 104 Idaho 469, 660 P.2d 934 (1983). *See also,* Idaho Criminal Rule 57(b)." *Ross v. State*, 141 Idaho 670, 671, 115 P.3d 761 (Idaho Ct.App. 2005). "A motion to reconsider a dismissal order properly should be treated as a motion to alter or amend a judgment under I.R.C.P. 59(e) if the motion was timely filed. *Hamilton v. Rybar,* 111 Idaho 396,

724 P.2d 132 (1986)." *Id.* To be timely under that rule, a motion "must be filed within fourteen days after the entry of the 'judgment.'" *Id.* However, if a motion

> for "reconsideration" raises new issues, or presents new information, not addressed to the court prior to the decision which resulted in the judgment, the proper analogy is to a motion for relief from judgment under Rule 60(b). That rule requires a showing of good cause and specifies particular grounds upon which relief may be afforded. Hendrickson v. Sun Valley Corporation, Inc., 98 Idaho 133, 559 P.2d 749 (1977). As with Rule 59(e) proceedings, the right to grant, or deny, relief under the provisions of Rule 60(b) is a discretionary one with the trial court. Johnston v. Pascoe, 100 Idaho 414, 599 P.2d 985 (1979).

Lowe v. Lym, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Idaho Ct.App. 1982.) In this case, Mr. Grant's motion would be considered timely under IRCP 59(e). Furthermore, as will be explained in greater detail below, Mr. Grant did not raise any new issues or present any new information not previously addressed by this Court prior to the decision which resulted in the judgment. Therefore, even though the Petitioner based his motion on several rules of Idaho civil procedure, including 59(e), 60(b), and 11(a)(2)(B), it is most proper for this Court to consider Mr. Grant's motion under Rule 59(e)[1].

"Rule 59 is a mechanism 'designed to allow the trial court either on its own initiative or on motion by the parties to correct errors both of fact and law that had occurred in its proceedings.'" *State v. Goodrich*, 104 Idaho 469, 471, 660 P.2d 934, 936 (1983)(internal citation omitted). That rule "thereby provides a mechanism for corrective action short of an

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[1] **Rule 59. New trial**

...

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than fourteen (14) days after entry of the judgment.

appeal. Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based." *Lowe*, 103 Idaho at 263, 646 P.2d at 1034 (internal citation omitted). With motions to alter or amend judgment, a party is not permitted to present new evidence. *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 n.3 (Idaho Ct. App. 2006). "A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. Cohen v. Curtis Publishing Co., 333 F.2d 974 (8th Cir. 1964)." *Id.* As such, "[a]n order denying a motion made under Rule 59(e) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion." *Id.*(internal citation omitted). Accordingly, this Court must recognize the matter as discretionary, act within the outer boundaries of its discretion, and reach its conclusion through an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power, Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000(1990).

DISCUSSION

By his latest motion, the Petitioner has once again raised claims of ineffective assistance of counsel. Mr. Grant asserts he is bringing this motion in order to set "forth new and additional facts in a more comprehensive presentation of both law and fact in order for this Court to reconsider its May 11, 2011, [order] for the legal conclusions reached were incorrect based upon relevant facts." (Mot. to Alter or Amend or Reconsider at 6.) However, Mr. Grant merely reasserts the same claims he has raised in his previous motions for post conviction relief. In particular, Mr. Grant again argues his counsel was ineffective in the following ways:

a) Trial Counsel failed to disqualify Judge;

b) Trial Counsel failed to file motion for change of venue;
c) Mr. Grant was denied Conflict-Free Counsel;
d) Trial Counsel coerced Mr. Grant to plead guilty;
e) Trial Counsel failed to have the Doctor who performed the Mental Health Evaluation at the sentencing hearing to offer mitigating evidence at the sentencing hearing;
f) Trial Counsel failed to bring forth at sentencing a witness to offer mitigating testimony at the sentencing hearing.

(*Id.* at 6.)

This Court has already addressed each of these claims in detail in both its Notice of Intent to Dismiss and its Order Dismissing Petition for Post Conviction Relief, finding such arguments to be conclusory and therefore insufficient to merit relief pursuant to the standards governing post conviction proceedings. By his Motion to Alter or Amend or Reconsider, Mr. Grant simply re-asserts these same claims of ineffective assistance, without presenting any compelling argument regarding alleged errors of fact or law committed by this Court in dismissing the Petition for Post Conviction Relief. Therefore, as Mr. Grant has not raised any new issues or presented any new information and has failed to sufficiently demonstrate that any error of fact or law has occurred, this Court must deny the Petitioner's motion.

CONCLUSION

This Court hereby DENIES the Motion to Alter or Amend or Reconsider Order Dismissing Petition for Post-Conviction Relief. Even considering the so-called clarified facts and arguments included within the Petitioner's motion, Mr. Grant still did not make a sufficient showing that any error, either factual or legal, occurred in this Court's previous decision dismissing the Petition for Post Conviction Relief. Based on the record in this case in its

entirety, the weight of the evidence favors this Court's dismissal. Therefore, the Petitioner's Motion to alter or amend the findings made by this Court under IRCP 59(e) cannot stand, and the Petitioner's Motion is hereby DENIED.

IT IS SO ORDERED.

DATED this 9 day of ~~July~~ August, 2011.

Robert C. Naftz

ROBERT C. NAFTZ
DISTRICT JUDGE

Copies to:
Mark L. Hiedeman
Woodrow Grant, IDOC No. 80692

ORIGINAL

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2011 SEP 21 AM 11:49
BY _____ DEPUTY CLERK

Woodrow Grant
80692 ISCI Unit-13
P.O. Box 14
Boise, ID

Petitioner-Appellant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2011-759-PC

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEY'S, STATE OF IDAHO, AND BANNOCK COUNTY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE-NAMED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Petitioner, appeals against the State of Idaho to the Idaho Supreme Court from the District Court's Order Dismissing Petition for Post-Conviction Relief entered into the record on May 11, 2011, and the Order Denying Motion to Alter or Amend or Reconsider Petition for Post-Conviction Relief filed on August 11, 2011, the Honorable Robert C. Naftz, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgments described in paragraph one (1) above is appealable pursuant to I.A.R. 11(c) (1-10).

3. That the Petitioner requests the entire reporter's standard transcript as defined in Rule 25(c), I.A.R.

4. The petitioner also requests the preparation of the following additional portions of the transcript:

(a) From the underlying criminal case's, CR-2009-0019451-FE and CR-2009-0019445-FE:

(1) Any and all pre-trial hearings;
(2) Any and all status conference hearings;
(3) Guilty Plea Hearings.

5. The Petitioner requests the standard clerk's record pursuant to I.A.R. 28(b)(2).

6. The Petitioner also requests the standard clerk's record pursuant to I.A.R. 28(b)(2) to include:

(a) Any Briefs or Memorandum, filed or lodged by the State, the Petitioner, or the Court in support of, or in opposistion to, the dismissal of the Post-Conviction Relief Petition;

(b) Any motions or responses, including all attachments, affidavits and their exhibits, or copies of transcripts, filed or lodged by the State, Petitioner or the Court in support of or in opposistion to, the dismissal of the Post-Conviction Relief Petition; and

(c) The Standard Clerk's Record as set out in I.A.R. 28(b)(2), including but not limited to any Presentence Investigation Report and the Psychological Evaluation of the underlying criminal case's: CR-2009-0019451-FE and CR-2009-0019445-FE.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter.

(b) That the Petitioner is exempt from paying the estimated transcript fee because he is indigent person and unable to pay said fee.

(c) That the Petitioner is exempt from paying the estimated fee for the preparation of the record because he is an indigent person and unable to pay said fee.

(d) That Petitioner is exempt from paying the appellate filing fee because he is indigent and is unable to pay said fee.

(e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

8. That the Petitioner anticipates raising issues including, but not limited to:

(a) Did the District Court exercise an abuse of discretion in dismissing the Petition for Post-Conviction Relief and denying the Motion to Alter or Amend or Reconsider Petition for Post-Conviction Relief when its issues were contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States?

Dated September 8, 2011

Woodrow Grant

Woodrow Grant, Petitioner-Appellant

VERIFICATION

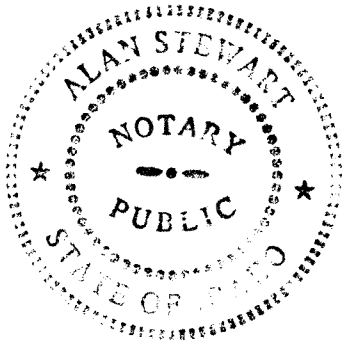
STATE OF IDAHO)
: ss.
County of Ada)

Woodrow Grant, being sworn, deposes and says:

That the party is the Appellant in the above entitled appeal and that all statements in this NOTICE OF APPEAL are true and correct to the best of his knowledge and belief.

Woodrow Grant
Woodrow Grant, Appellant

SUBSCRIBED, SWORN and AFFIRMED to before me this 8 day of September, 2011



Notary Public for Idaho
Commission expires: 8/10/2014

CERTIFICATE OF MAILING

I hereby certify that on SEPTEMBER 8, 2011, I mailed the original NOTICE OF APPEAL to the clerk of the Court for the purposes of filing and a true and correct copy via prison mail system to the U.S. Mail postage prepaid to:

Bannock County Prosecutor
624 E. Center
Pocatello ID 83201

Stephanie Davis, Reporter
P.O. Box 4131
Pocatello, ID 83205

Idaho Supreme Court Clerk
P.O. Box 83720
Boise, ID 83720-0101

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise ID 83720-0010

Woodrow Grant

Woodrow Grant, Appellant

ORIGINAL

Inmate name Woodrow Grant
IDOC No. 80692 ISCI Unit-13
Address P.O. Box 14
Boise Idaho 83707

Defendant-Appellant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

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

WOODROW GRANT,

Petitoner-Appellant,

vs.

STATE OF IDAHO,

Respondent .

Case No. CV-2011-759-PC

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

COMES NOW, Woodrow Grant, Petitioner-Appellant in the above entitled matter and moves this Honorable Court to grant Defendant-Appellant'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-Appellant is currently incarcerated within the Idaho Department of Corrections under the direct care, custody and control of Warden Johanna Smith, of the Idaho State Correctional Institution.

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

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

4. Other: Requests Appointment of the State Appellate Public Defender.

DATED this 8 day of September, 20 11.

Woodrow Grant
Petitioner-Appellant

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of Ada)

Woodrow Grant, 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 Johanna Smith;

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.

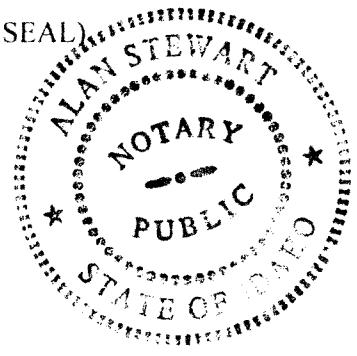
WHEREFORE, Petitioner-Appellant respectfully prays that this Honorable Court issue it's Order granting Petitioner-Appellant's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Petitioner-Appellant is entitled to.

DATED This 8 day of September, 20 11.

Woodrow Grant
Petitioner-Appellant

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 8 day of September, 20 11.

(SEAL)



Notary Public for Idaho
Commission expires: 8/16/2014

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8 day of September, 2011, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010

Bannock County Prosecuting Attorney
624 E. Center
Pocatello ID 83201

Waldrow Grant
Petitioner-Appellant

Woodrow Grant 86692
Full Name of Party Filing Document

P.O. Box 14
Mailing Address (Street or Post Office Box)

Boise Idaho 83707
City, State and Zip Code

Telephone

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff, - Respondent
vs.
WOODROW GRANT,
Defendant. - Petitioner

Case No. CV-2011-759-PC

MOTION AND AFFIDAVIT FOR PERMISSION TO PROCEED ON PARTIAL PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

☐ Plaintiff ☑ Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Appeal of Post-Conviction Relief. I believe I am entitled to get what I am asking for.

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: Woodrow Grant Other name(s) I have used: _____

_____

Address: P.O. Box 14, Boise ID 83707

How long at that address? _____ Phone: _____

Year and place of birth: _____

DEPENDENTS:

I am ☒ single ☐ married. If married, you must provide the following information:

Name of spouse: _____

_____

My other dependents including minor children (use only initials and age to identify children) are: _____

_____

_____

_____

INCOME:

Amount of my income: $ 0 per ☐ week ☐ month

Other than my inmate account I have outside money from: Ø

My spouse's income: $ 0 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
NA					

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

Description (provide description for each item)	**Value**
Cash Inmate Trust Account	
Notes and Receivables	0
Vehicles	0
Bank/Credit Union/Savings/Checking Accounts	0
Stocks/Bonds/Investments/Certificates of Deposit	0
Trust Funds	0
Retirement Accounts/IRAs/401(k)s	0
Cash Value Insurance	0
Motorcycles/Boats/RVs/Snowmobiles	0
Furniture/Appliances	0
Jewelry/Antiques/Collectibles	0
Description (provide description for each item)	
TVs/Stereos/Computers/Electronics	0
Tools/Equipment	0
Sporting Goods/Guns	0
Horses/Livestock/Tack	0

Other (describe)_____ -0-

_____

_____

EXPENSES: (List all of your monthly expenses.)

Expense	**Average Monthly Payment**
Rent/House Payment	-0-
Vehicle Payment(s)	-0-
Credit Cards (List last four digits of each account number.)	
	-0-
Loans (name of lender and reason for loan)	
	-0-
Electricity/Natural Gas	-0-
Water/Sewer/Trash	-0-
Phone Time	$ 0
Groceries Commissary	$ 50.00
Clothing	
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 Medical Co-Pay	$5.00
Other Legal copies & Mailing	$ 5.00

MISCELLANEOUS:

How much can you borrow? $ 0 From whom? _____

When did you file your last income tax return? 2008 Amount of refund: $ 500.00

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

Name	Address	Phone	Years Known
Eunice Grant	Pocatello, Id	220-4135	26
Eric Grant	Pocatello, Id	680-7352	26

Woodrow Grant
Typed/printed

Woodrow Grant
Signature, Woodrow Grant

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me on this 8 day of September, 2011

ALAN STEWART NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Idaho
Commission expires 8/16/2014

= IDOC TRUST ========== OFFENDER BANK BALANCES ========== 08/22/2011 =

Doc No: 80692 Name: GRANT, WOODROW JOHN ISCI/UNT13 PRES FACIL
Account: CHK Status: ACTIVE TIER-D CELL-94

Transaction Dates: 08/01/2010-08/22/2011

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	1608.96	1633.81	24.85

TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
08/03/2010	HQ0509116-001	950-REINCARCERATED	IBSUSPCHK	0.00	0.00
08/03/2010	HQ0509126-012	013-RCPT RDU	RDU	1.03	1.03
08/05/2010	HQ0509592-010	011-RCPT MO/CC	RTCP MO	50.00	51.03
08/09/2010	II0510207-936	099-COMM SPL		14.97DB	36.06
08/09/2010	II0510207-937	099-COMM SPL		12.13DB	23.93
08/16/2010	II0510956-754	099-COMM SPL		10.20DB	13.73
08/16/2010	II0510956-755	099-COMM SPL		5.59DB	8.14
08/16/2010	II0511009-014	071-MED CO-PAY	383325	5.00DB	3.14
08/23/2010	II0511745-724	099-COMM SPL		1.86DB	1.28
08/24/2010	HQ0511936-017	011-RCPT MO/CC	RTCP MO	40.00	41.28
08/25/2010	II0512197-025	100-CR INM CMM		1.86	43.14
08/30/2010	II0512627-710	099-COMM SPL		19.27DB	23.87
08/30/2010	II0512627-711	099-COMM SPL		6.80DB	17.07
08/31/2010	II0512849-010	071-MED CO-PAY	397008	7.00DB	10.07
09/03/2010	IC0513396-338	099-COMM SPL		10.00DB	0.07
09/23/2010	HQ0515727-018	011-RCPT MO/CC	289942	340.00	340.07
09/28/2010	IC0516314-557	099-COMM SPL		85.75DB	254.32
09/30/2010	HQ0516504-018	011-RCPT MO/CC	171930	100.00	354.32
10/01/2010	IC0516678-013	078-MET MAIL	114549	0.17DB	354.15
10/05/2010	IC0516897-517	099-COMM SPL		78.22DB	275.93
10/06/2010	IC0517382-020	078-MET MAIL	116152	1.73DB	274.20
10/08/2010	HQ0517870-008	011-RCPT MO/CC	056586	50.00	324.20
10/12/2010	IC0517927-561	099-COMM SPL		22.30DB	301.90
10/13/2010	IC0518343-029	078-MET MAIL	115978	1.73DB	300.17
10/19/2010	IC0518919-688	099-COMM SPL		280.23DB	19.94
10/20/2010	HQ0519092-009	022-PHONE TIME	116547	17.00DB	2.94
10/29/2010	HQ0520042-014	011-RCPT MO/CC	879315	25.01	27.95
11/02/2010	IC0520360-526	099-COMM SPL		21.48DB	6.47
11/03/2010	IC0520671-012	078-MET MAIL	117188	2.75DB	3.72
11/04/2010	HQ0520724-017	011-RCPT MO/CC	521575	20.00	23.72
11/09/2010	IC0521439-557	099-COMM SPL		21.79DB	1.93
11/15/2010	HQ0522095-016	011-RCPT MO/CC	076807	20.00	21.93
11/16/2010	IC0522179-646	099-COMM SPL		17.88DB	4.05
11/16/2010	IC0522304-006	078-MET MAIL	117143	2.71DB	1.34
11/29/2010	HQ0523469-014	011-RCPT MO/CC	731067	50.00	51.34
11/30/2010	IC0523588-011	070-PHOTO COPY	117142	2.80DB	48.54
12/07/2010	IC0524936-488	099-COMM SPL		36.59DB	11.95
12/10/2010	HQ0525483-003	011-RCPT MO/CC	741214	40.00	51.95
12/14/2010	IC0525877-493	099-COMM SPL		36.59DB	15.36

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Transaction Dates: 08/01/2010-08/22/2011

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	1608.96	1633.81	24.85

TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
12/14/2010	IC0525914-493	099-COMM SPL		-36.59DB	51.95
12/14/2010	IC0525926-670	099-COMM SPL		44.21DB	7.74
12/14/2010	IC0525974-022	078-MET MAIL	122490	4.85DB	2.89
12/17/2010	HQ0526491-008	011-RCPT MO/CC	845087	20.00	22.89
12/20/2010	IC0526734-012	078-MET MAIL	121218	6.16DB	16.73
12/21/2010	HQ0526858-009	011-RCPT MO/CC	843423	50.00	66.73
12/23/2010	IC0527219-495	099-COMM SPL		48.07DB	18.66
12/28/2010	HQ0527590-011	011-RCPT MO/CC	182745	50.00	68.66
01/04/2011	IC0528324-630	099-COMM SPL		54.13DB	14.53
01/07/2011	IC0529034-029	078-MET MAIL	127823	1.05DB	13.48
01/10/2011	HQ0529142-011	011-RCPT MO/CC	640902	30.00	43.48
01/11/2011	IC0529332-582	099-COMM SPL		6.00DB	37.48
01/18/2011	IC0529982-599	099-COMM SPL		26.48DB	11.00
01/18/2011	IC0529984-027	100-CR INM CMM		54.13	65.13
01/24/2011	IC0530741-027	078-MET MAIL	132982	2.75DB	62.38
01/25/2011	IC0530816-582	099-COMM SPL		42.29DB	20.09
01/27/2011	HQ0531291-016	061-CK INMATE	K-133158	9.25DB	10.84
01/31/2011	IC0531529-029	078-MET MAIL	132091	2.07DB	8.77
02/01/2011	IC0531587-567	099-COMM SPL		7.00DB	1.77
02/03/2011	HQ0532078-014	011-RCPT MO/CC	317879	40.00	41.77
02/08/2011	IC0532636-528	099-COMM SPL		31.26DB	10.51
02/08/2011	HQ0532829-012	022-PHONE TIME	131224	6.80DB	3.71
02/11/2011	IC0533232-022	078-MET MAIL	132410	2.34DB	1.37
02/11/2011	IC0533236-007	070-PHOTO COPY	132413	4.30DB	2.93DB
02/14/2011	HQ0533255-024	011-RCPT MO/CC	632904	10.00	7.07
02/15/2011	IC0533363-658	099-COMM SPL		6.37DB	0.70
02/15/2011	HQ0533511-001	961-FIX BATCH 5332	FIX BATCH	20.00	20.70
02/22/2011	IC0533968-513	099-COMM SPL		14.97DB	5.73
02/22/2011	HQ0534057-023	022-PHONE TIME	121184	3.40DB	2.33
03/01/2011	IC0534891-502	099-COMM SPL		1.50DB	0.83
03/02/2011	HQ0535040-019	011-RCPT MO/CC	732821	50.00	50.83
03/08/2011	IC0535797-507	099-COMM SPL		26.97DB	23.86
03/09/2011	HQ0536018-002	022-PHONE TIME	133985	3.40DB	20.46
03/15/2011	IC0536585-626	099-COMM SPL		19.50DB	0.96
03/18/2011	HQ0537060-024	011-RCPT MO/CC	249807	30.00	30.96
03/21/2011	IC0537237-019	078-MET MAIL	133872	1.90DB	29.06
03/21/2011	IC0537238-016	078-MET MAIL	135556	5.08DB	23.98
03/22/2011	IC0537335-568	099-COMM SPL		14.01DB	9.97
03/29/2011	HQ0538044-014	011-RCPT MO/CC	551287	100.00	109.97

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TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
03/31/2011	HQ0538385-006	061-CK INMATE	J-135650	4.25DB	105.72
03/31/2011	HQ0538452-271	970-533048 VOIDED	6	-4.25DB	109.97
03/31/2011	IC0538464-006	045-ICE CREAM	J-135650	4.25DB	105.72
04/01/2011	II0538723-001	072-METER MAIL	184389	2.27DB	103.45
04/04/2011	II0538945-772	099-COMM SPL		13.10DB	90.35
04/05/2011	HQ0539138-012	013-RCPT RDU	POWER	0.53	90.88
04/05/2011	II0539254-011	100-CR INM CMM		13.10	103.98
04/11/2011	II0539825-005	072-METER MAIL	171265	2.75DB	101.23
04/11/2011	II0539869-922	099-COMM SPL		19.12DB	82.11
04/11/2011	II0539869-923	099-COMM SPL		31.39DB	50.72
04/13/2011	II0540340-001	071-MED CO-PAY	446247	3.00DB	47.72
04/13/2011	HQ0540350-001	012-RCPT CHECK	ICE CREAM	4.25	51.97
04/14/2011	HQ0540414-012	011-RCPT MO/CC	RCPT MO	20.00	71.97
04/14/2011	II0540474-018	071-MED CO-PAY	446233	11.00DB	60.97
04/18/2011	II0540794-771	099-COMM SPL		17.00DB	43.97
04/18/2011	II0540794-772	099-COMM SPL		26.30DB	17.67
04/20/2011	II0541121-021	070-PHOTO COPY	184390	2.45DB	15.22
04/25/2011	II0541477-690	099-COMM SPL		10.07DB	5.15
05/02/2011	II0542157-658	099-COMM SPL		1.64DB	3.51
05/03/2011	II0542374-001	072-METER MAIL	189707	0.88DB	2.63
05/09/2011	HQ0543305-001	011-RCPT MO/CC	RTCP MO	20.00	22.63
05/09/2011	II0543339-885	099-COMM SPL		2.27DB	20.36
05/11/2011	II0543756-012	070-PHOTO COPY	189706	1.00DB	19.36
05/13/2011	HQ0543978-019	011-RCPT MO/CC	RTCP MO	20.00	39.36
05/16/2011	II0544142-685	099-COMM SPL		29.32DB	10.04
05/23/2011	II0544833-664	099-COMM SPL		8.64DB	1.40
05/25/2011	II0545099-001	072-METER MAIL	187116	3.36DB	1.96DB
05/31/2011	II0545534-014	072-METER MAIL	174315	0.44DB	2.40DB
05/31/2011	II0545649-017	070-PHOTO COPY	187117	4.70DB	7.10DB
06/02/2011	HQ0546011-021	011-RCPT MO/CC	RTCP MO	40.00	32.90
06/03/2011	II0546150-018	223-MAY PAY PENDYN	PENDYNE	12.00	44.90
06/06/2011	II0546413-797	099-COMM SPL		40.08DB	4.82
06/09/2011	HQ0547041-008	011-RCPT MO/CC	RTCP MO	20.00	24.82
06/10/2011	II0547221-013	072-METER MAIL	184049	2.22DB	22.60
06/13/2011	II0547382-819	099-COMM SPL		22.51DB	0.09
06/15/2011	HQ0547655-020	011-RCPT MO/CC	RTCP MO	5.00	5.09
06/16/2011	II0547779-005	072-METER MAIL	184051	1.71DB	3.38
06/27/2011	II0548847-665	099-COMM SPL		2.55DB	0.83
06/30/2011	HQ0549364-008	011-RCPT MO/CC	RCPT MO	10.00	10.83

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Doc No: 80692 Name: GRANT, WOODROW JOHN ISCI/UNT13 PRES FACIL
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Transaction Dates: 08/01/2010-08/22/2011

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TRANSACTIONS

Date	Batch	Description	Ref Doc	Amount	Balance
06/30/2011	HQ0549364-009	011-RCPT MO/CC	RCPT MO	100.00	110.83
07/01/2011	II0549535-012	223-JUN PAY PENDYN	PENDYNE	30.00	140.83
07/05/2011	II0549742-773	099-COMM SPL		40.40DB	100.43
07/07/2011	HQ0550057-001	960-FIX BATCH 5493	FIX 549364	100.00DB	0.43
07/12/2011	HQ0550774-002	011-RCPT MO/CC	RTCP MO	25.00	25.43
07/18/2011	II0551322-808	099-COMM SPL		13.25DB	12.18
07/18/2011	II0551322-809	099-COMM SPL		10.82DB	1.36
07/19/2011	HQ0551470-006	011-RCPT MO/CC	RCPT MO	20.00	21.36
07/21/2011	II0551816-014	072-METER MAIL	194382	1.71DB	19.65
07/21/2011	II0551817-003	072-METER MAIL	194381	1.71DB	17.94
07/25/2011	II0552021-701	099-COMM SPL		17.33DB	0.61
08/01/2011	HQ0552722-012	011-RCPT MO/CC	RCPT MO	15.00	15.61
08/03/2011	II0552971-005	072-METER MAIL	194407	3.41DB	12.20
08/05/2011	II0553412-009	072-METER MAIL	80692	1.71DB	10.49
08/05/2011	II0553495-012	211-JUL PAY PENDYN	PENDYNE	31.90	42.39
08/08/2011	II0553691-879	099-COMM SPL		3.71DB	38.68
08/08/2011	II0553691-880	099-COMM SPL		31.96DB	6.72
08/08/2011	HQ0553711-019	011-RCPT MO/CC	RCPT MO	30.00	36.72
08/10/2011	II0554027-006	072-METER MAIL	194461	1.71DB	35.01
08/10/2011	HQ0554071-015	011-RCPT MO/CC	RCPT MO	5.00	40.01
08/15/2011	II0554512-771	099-COMM SPL		33.45DB	6.56
08/18/2011	HQ0554991-004	011-RCPT MO/CC	RCPT MO	20.00	26.56
08/22/2011	II0555193-001	072-METER MAIL	194462	1.71DB	24.85

STATE OF IDAHO
Idaho Department of Correction
I hereby certify that the foregoing is a full, true, and correct copy of an instrument as the same now remains on file and of record in my office.
WITNESS my hand hereto affixed this 22nd
day of August A.D. 2011
By L. Gudens

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent-Respondent on Appeal,	)	Supreme Court No. CLERK'S CERTIFICATE OF APPEAL

Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Robert C. Naftz presiding

Bannock County Case No: CV-2011-759-PC

Order of Judgment Appealed from: Order Dismissing Petition for Post Conviction Relief field the 11th day of May, 2011 and Order Denying Motion to Alter or Amend or Reconsider Petition for Post-Conviction Relief.

Attorney for Appellant: Woodrow Grant, pro se, Boise, Idaho

Attorney for Respondent: Lawrence G. Wasden, Attorney General, Boise

Appealed by: Woodrow Grant

Appealed against: State of Idaho

Notice of Appeal filed: September 21, 2011

Notice of Cross-Appeal filed: No

Appellate fee paid: No, exempt

Request for additional records filed: No

Request for additional reporter's transcript filed:

Name of Reporter: Stephanie Davis

Was District Court Reporter's transcript requested? Yes from the Underlying Criminal Cases CR-2009-19451-FE and CR-2009-19445-FE.

Estimated Number of Pages: More than 100

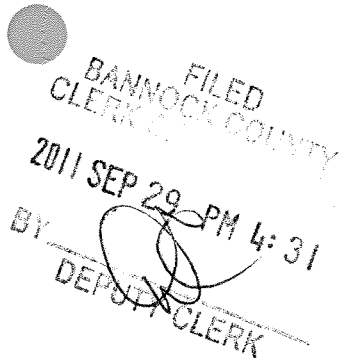
Dated September 22, 2011

(Seal)

DALE HATCH,
Clerk of the District Court

By _____
Deputy Clerk

Inmate name Woodrow Grant
IDOC No. 80692 /SCI Unit-13
Address P.O. Box 14
Boise, Idaho 83707



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

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

WOODROW GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent.	Case No. CV-2011-759-PC **ORDER GRANTING MOTION FOR APPOINTMENT OF COUNSEL**

IT IS HEARBY ORDERED that the Petitioner-Appellant's Motion for Appointment of Counsel is granted and the State Appellate P.D. (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said defendant in all proceedings involving this appeal.

DATED this 26 day of September, 2011.

Robert C. Naftz
District Judge

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW JOHN GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Defendant-Appellant.	Supreme Court No. 39207-2011 CLERK'S CERTIFICATE

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

I do further certify that there were no exhibits marked 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 said Court at Pocatello, Idaho, this 18 day of January, 2011.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By _____
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW JOHN GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Defendant-Appellant.	)	Supreme Court No. 39207-2011 CERTIFICATE OF EXHIBITS

I, DALE HATCH, the duly elected, qualified and acting Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, do hereby certify that there were no exhibits marked for identification and introduced into evidence at trial. The following exhibit will be treated as a exhibit in the above and foregoing cause, to wit:

1. Presentence Report from CR-2009-19451-FE and CR-2009-19445-FE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 18 day of January, 2011.

DALE HATCH, Clerk of the District Court
Bannock County, State of Idaho

(Seal)

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

WOODROW JOHN GRANT, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent,	)	Supreme Court No. 39207-2011 CERTIFICATE OF SERVICE

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that I have personally served or mailed, by United States mail, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Molly Huskey
Appellate Public Defender
Post Office Box 83720
Boise, Idaho 83720-0005

Lawrence G. Wasden
Idaho Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 18 day of January, 2011.

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

(Seal)

By _____
Deputy Clerk